Alberta's Protection Against Family Violence Act: A Summative Evaluation

FINAL REPORT
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Penny Kelly – (Chair) Senior Manager, Office for the Prevention of Family Violence

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Deborah Jesso, Janie Christensen, Karen Wyllie and Ashley Barlow, all research assistants with RESOLVE Alberta, conducted the interviews and summarized the important themes from the key stakeholders. Carolyn Wright, Amy Nixon, Ashley Barlow and Gayle Hiscocks completed the court file reviews of the *PAFVA* applications. Thank you all for your diligence.

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1.0 Executive Summary

The severity and pervasiveness of domestic violence in Alberta and the creation of civil domestic violence legislation in other provinces, such as Saskatchewan's *Victims of Domestic Violence Act* and Prince Edward Island's *Victims of Family Violence Act,* prompted discussions of similar legislation in Alberta in the 1990s. A report by Statistics Canada (1993) indicated that Alberta had one of the highest lifetime rates of wife assault.

The province of Alberta's *Protection Against Family Violence Act (PAFVA)* came into effect on June 1, 1999. Similar to legislation adopted in other Canadian provinces, the intent is to protect family members from domestic violence by allowing a claimant to receive an emergency protection order (EPO) issued by a provincial court judge or justice of the peace, usually with the assistance of the police. An EPO must be reviewed by a Court of Queen's Bench justice within seven working days of the order being granted. A Queen's Bench protection order is a second type of protection order that a claimant can directly apply for at the Court of Queen's Bench. The orders are intended to complement other tools of the justice system, such as criminal charges, restraining orders and peace bonds, to more effectively address and provide consequences for the serious nature of intimate partner violence.

The Howard Research report (September, 2000) conducted what was to have been the first of a three-phase evaluation of the implementation and impact of the *Protection Against Family Violence Act*. The report focused on the first 15 months of the implementation of the Act (June 1999-August 2000). The Howard report concluded that the new legislation was being under-utilized. The stakeholders suggested that the lower than anticipated utilization rates were the result of low overall awareness, police reluctance to apply for orders, and JP's reluctance to grant orders. Recommendations to increase the utilization rate included increased training and awareness campaigns.

The second and third phases of the *PAFVA* evaluation were to have been implemented in the following two years but were not. The current summative evaluation of the legislation updates the Howard research, focusing on 2002 until June of 2004.

1.1 The Purpose of the Current Evaluation

The current research is a summative evaluation of the *PAFVA* legislation. Summative evaluations assess the ultimate success of a program (whether or not it has achieved its objectives), often to determine whether or not it should be continued (Patton, 1990; Rubin & Babbie, 1993). The current evaluation utilized a mix of quantitative and qualitative data to evaluate the impact of implementing the *PAFVA* legislation.

In addition, however, the current evaluation gathered information related to the process of obtaining an EPO through both the court file review and the key informant interviews. A number of the members of the *PAFVA* Evaluation Working Group were interested in questions of both process and outcome in assessing the extent to which the *PAFVA* legislation has achieved its goals. As such, more process oriented questions were included in the key informant interview schedules.

This summative evaluation of the *PAFVA* comprises three major research components:

- A legal analysis of the *PAFVA* legislation looking at the case-law decided under *PAFVA* and comparing the provisions with other similar provincial legislation, particularly Saskatchewan and Manitoba.
- An analysis of quantitative data collected from 981 court files of claimants for EPOs and QBPOs in 2002 until the end of June of 2004. These represent the entire sample of EPO applications in Alberta for which files were created.
- An analysis of qualitative individual interviews conducted with 180 key stakeholders in Alberta.

1.2 Outcomes from the Court File Data Analysis

The court file review of the 981 applications for emergency protection orders across Alberta provides a comprehensive view of the nature of the circumstances leading to an application for an EPO under the *PAFVA* legislation and the outcomes of both the EPO application and the review in the Court of Queen's Bench. However, what cannot be gleaned from the court files is what processes led to making the application and what happened after the QBPO was granted. Questions such as whether or not the protection order was breached, the consequences for breaching and whether claimants felt safer with the protection orders in place cannot be answered by the information in these files. With such limitations in mind, the data analysis provides the following outcomes and conclusions with respect to applications for EPOs.

1.1.1 What are the Characteristics of the Claimants and Respondents?

- The majority of claimants were women (92.1%) and the respondents were mostly male (94.5%).
- Although the majority of the files did not include information on racial background, both claimants and respondents were mostly Caucasian (53.4% and 57% respectively) and a smaller proportion were from Aboriginal backgrounds (22.9% and 18.9%).
- Of the 737 applications with children named on them, most (75.6%) requested that the order also protect the children.
- The highest proportions of the respondent's relationship with the claimant were spouses (31.9%); common-law partners (19.6%); ex-common law partners (15.9%) and ex-partners, either legally separated or divorced (12.1%).
- Over half of the claimants/respondents were living together when the application was made (60.8%).
- There was one acknowledged same sex partner relationship.

A question of interest was the extent to which the relationships of those applying for EPOs were previously violent.

- Almost all (90%) of the relationships had been violent previous to the incident that prompted the EPO application. Most commonly noted were prior incidents of physical assault (42.4%); and threats to kill claimant/others protected under the order (10.8%).

- A small number of the claimants had previously been granted an emergency protection order (23.1%) or a restraining order (21.8%). An additional number (4.4%) had non-emergency protection orders such as Queen's Bench protection orders.
- Over two-fifths of the respondents (4.3.5%) had previous criminal records related to domestic violence or stalking. Of those with criminal records, the most common prior were with respect to domestic assault (42%), and general assault (37%).
- In the majority of cases (85.7%) there were no criminal matters currently proceeding related to the cases at the time of the EPO application. About one-fifth of the claimants (14%) had criminal matters in progress documented on the application for an emergency protection order. In another 14.1% of the applications noted that the police investigation was pending or charges will be laid in future. The option of "layering orders", or proceeding with both criminal and civil remedies, is being utilized in several cities.

1.2.2 Were the EPOs Granted and with What Prohibitions?

- The number of applications in 2003 increased form the amount in 2002 and is increasing again in 2004, if the figures for the first half of that year hold steady. The increase is largely accounted for by applications in Edmonton.
- Of the 976 applications heard by Justices of the Peace/Provincial Court Judges in Alberta from 2002 to June of 2004, the majority (82.7%) were granted.
- The most common conditions granted were prohibiting the respondent from contacting or communicating with the victim or others named in the Order (96%) and from attending at or near the victim's residence (95%).
- 17.3% of the EPO applications were denied, with the most common reason being that no immediate protection was required. In 28 cases, the application was not considered to fit within the definition of cohabitant under the Act.
- Several trends over the last two and a half years were noted, with an increase in claimants applying themselves in Provincial Court rather than utilizing the police and Justices of the Peace (mostly in Edmonton). More applications made by the claimants themselves were denied, signaling problems in this process.

1.2.3 What Happened at the Queen's Bench Review?

Of those granted the initial emergency protection order, 781 cases were reviewed before a Court of Queen's Bench justice. Including the categories of granted, varied, revoked and a new order granted, the outcome of the QB review is that 70.4% of the orders were granted or granted in changed form.

The lengths of time for which the orders were granted varied considerably. The categories cannot be easily compared because the length of days varies. A small number of the orders were in place for less than two weeks and another 12% were from two weeks to one month. These very short times are questionably effective given the amount of effort entailed in being granted an emergency protection order.

In about one-half of the situations in which the order was not granted the claimant (sometimes in conjunction with the respondent) asked that the order be vacated. In another almost half, neither the claimant nor the respondent appeared at the QB review. Some claimants may not have realized that the seven day review exists and is obligatory.

Of the cases in which there is documentation that the applications were reviewed by a JP/Provincial Court judge, the majority were granted. Of these, three-quarters were granted or varied. As such, the applications that are heard and reviewed are typically validated. Interestingly, some of the prohibitions are rarely, if ever, utilized.

1.3 The Key Informant Interviewees

In addition to the quantitative court file data presented previously, this report includes information from interviews conducted with 180 key informants. These included the following:

- Mandated reporters (30 RCMP or city police officers; 26 Child Welfare workers)
- 20 justices of the peace or judges.
- Front-line service workers not mandated to report but that are often involved with the reporting process: 18 court administrators from both provincial and Queen's Bench courtrooms;
- 17 Victim Assistance workers from units associated with police services.
- 31 shelter directors/staff.
- An additional 34 key informant interviews with justice and community agency stakeholders in Calgary and Edmonton.
- Four claimants: two women who obtained EPOs and two who were dissuaded from applying.

1.4 Discussion

This section consolidates the information gathered from the legal analysis, the court file review and the individual interviews with key justice and community stakeholders. The discussion follows the four key components identified in the logic model created by the PAFVA Evaluation Working Group: Communication, Protection using EPOs, Protection using QBPOs and Training.

The discussion summarizes the research results considering the following factors: accessibility to the EPOs and QBPO orders; the application process/screening; who shall act as mandated reporters (all aspects of Communication); the safety and provisions of the EPOs and QBPOs once granted, breaches of the orders and whether the orders prevent violence in future and training.

Chapter 8 presents a number of recommendations to revise the *PAFVA* legislation that address the concerns raised in this summative evaluation. For the purposes of the Executive Summary, the most important recommended changes are to expand the means by which claimants apply for orders and to broaden what professionals can assist domestic violence victims in accessing civil protection orders (the focus of the next section). The reader is referred to Chapter 8 to view the other recommendations.

1.4.1 Communication: Access to the EPOs/QBPOs

The review of 981 court files of Alberta applications for emergency protection orders in the years 2002 to June of 2004 highlights that once the application is heard, the majority of orders are granted by justices of the peace or provincial court judges and are confirmed or varied within seven days by the Court of Queen's Bench. This outcome supports the utility of the legislation with respect to applications that are heard by JPs and that are reviewed in QB.

Across the file review and interviews with key stakeholders the intent of the legislation was perceived as positive. The goal of providing an additional and powerful tool for victims of domestic violence, one of the major outcomes for the legislation, was lauded. In general, though, EPOs are perceived as being under-utilized, with the exception of the city of Edmonton and several small rural centres where the police have increased the use of the protection orders substantially over the 2002-June 2004 period.

The first key to accessibility is knowledge about the existence of EPOs. Most of the police officers interviewed were aware of EPOs. When this was not the case it was mostly with respect to RCMP officers that service rural communities in Alberta but whose postings are mobile across the country. If officers have come from a province that does not have similar legislation, they may not be aware of this option.

In contrast, although child welfare workers have been mandated to utilize the *PAFVA* since its inception, a number of those that we interviewed were not aware that they had this authority. Of the other key community and justice interviewees, some were well informed about PAFVA while others, such as directors of agencies in the community that provide counselling to victims, knew little if anything about EPOS and QBPOs. Since such agencies are one venue to suggest options to victims of domestic violence, this lack of professional awareness is an important gap.

The most significant concern with respect to the utilization of the *PAFVA* in Alberta is accessibility of the orders via the police. Although police officers in a number of locations were utilizing EPOs, in rural and remote communities serviced by the RCMP, but also, strikingly, in several major cities such as Lethbridge, Red Deer and Calgary, EPOs are seldom utilized. Across these locations, either the police seem not to understand the legislation or they choose not to utilize it as a tool because it is a civil remedy and they are trained to and prefer to utilize the Criminal Code instead. A lack of training was a factor for some RCMP officers who had moved to Alberta from other provinces, however, most of the police members that we interviewed had been trained.

The choice for some police services to not use the *PAFVA* is in sharp contrast to the city of Edmonton and a number of rural communities that are also serviced by the RCMP that perceive EPOs and QBPOs as valuable tools that protect victims when either the Criminal Code is not applicable, victims would not support the justice process if criminal charges were laid, or the police are layering EPOs with criminal charges to provide additional protection to victims and their children.

Another barrier to utilization is that the current mandated professionals, the police and child welfare workers, are not typically perceived by members of the general public as providing support to victims of domestic violence except when they are fulfilling their

usual tasks, laying criminal charges or protecting children exposed to domestic violence. Ironically, these professionals are often the last recourse for most victims of domestic violence. As several of the police officers reiterated, most victims contact them because there has been an episode that warrants criminal charges, not when there has not.

Several remedies could be considered to improve the accessibility of EPOs and QBPOs to domestic violence victims: mandating additional professional groups to assist claimants in applying for orders; allowing claimants and/or their counsel to apply for orders by telecommunication; and creating other venues for applications including a provincial office accessible by a toll-free telephone number to provide advice and assistance to claimants.

Recommendation 1: The *PAFVA* Regulations should be amended to provide that applications for EPOs can be made by the claimant with assistance or counsel by telecommunication.

Recommendation 2: The *PAFVA* regulations should be amended to broaden the scope of persons who are authorized to apply for EPOs (suggestions include specially trained shelter workers, Victim Service workers).

Recommendation 3: Create an easily accessible mechanism for potential claimants to receive assistance and information about whether their circumstances warrant applying for an EPO and other possible options.

Accessibility also entails ensuring that victims that need protection can make a strong enough case that the violence or threat of violence is significant be granted an EPO. Adding a standardized process that provides information about the nature of the domestic violence would add validity to the EPO application process and assist the justices and JP's that are charged with granting the orders.

In addition to making EPOs more accessible for those who might benefit from the provisions, utilizing a screening tool could also address the serious question of how to protect individuals for whom a protection order will not be effective because the respondents will not take it seriously. This group of claimants was mentioned repeatedly as of considerable concern by judges and JPs, police officers and shelter directors. The phrase "it's just a piece of paper" was mentioned by both victims and professionals throughout the interviews and exemplifies the worry that high risk offenders ignore such interventions.

None of the key stakeholders are so naïve as to believe that safety can be guaranteed to claimants through either civil or criminal remedies. The implied promise of protection via granting an EPO or QBPO is potentially dangerous. Comments from the police, JPs and judges and shelter directors suggest that they have counseled such victims to use alternatives such as assisting the police to lay criminal charges. However there is little documentation of how often this is effective. Asking EPO applicants one question about whether the respondent has complied with restrictions from previous orders, will likely address this concern. If he/she has complied with other orders, he/she is likely to comply with an EPO. If not, a different type of protection order is unlikely to be effective.

1.4.2 Communication: The EPO/QBPO Application Process

Even mandated reporters that have utilized the *PAFVA* reported some problems with the application, although even here there were dissenting voices. For example, many police officers who support EPOs describe the process as simple, straightforward in comparison to at least an equal number that described it as tedious or cumbersome. Although there is no official form to apply for an EPO, several were developed by trainers to meet this need, but without official sanction. Several JPs and judges critiqued the "form" as repetitious and as needing to be revised.

Another issue relating to the application process is the review procedure for EPOs. The *PAFVA* requires that EPOs be reviewed on the basis of affidavit or sworn evidence (section 3(2)). In practical terms, this means that the claimant must appear, or have counsel appear, at the QB confirmation hearing. This may be another factor in the low utilization rate for EPOs in some parts of the province.

Procedures in other jurisdictions (such as Manitoba and Saskatchewan) are less onerous. In Saskatchewan, for example, the QB judge reviews the paperwork on the file to decide if the order should be confirmed, but still has the option of ordering a hearing if the evidence is insufficient. If a hearing is ordered, the respondent is summoned to appear and the claimant may appear.

Another issue that can be a barrier to access is the definitions in the legislation with respect to whom and under what circumstances individuals fit the criteria for protection orders. The key informants identified a number of issues with respect to this. One problem was that of the need to constitute an emergency. This was deemed as one of the most contentious issues by JPs, the police and other key stakeholders. Whether circumstances such as the respondent being in police custody or the claimant residing in an emergency women's shelter preclude the granting of EPOs is subject to interpretation. It also counteracts the new-found practice of police officers layering orders to more adequately protect victims and their children.

1.4.3 Protection Using QBPOs

The key stakeholders made a point of acknowledging the powers inherent in the provisions that it is possible to utilize in a QBPO. Interestingly though, relatively few of these are routinely utilized. Several of the provisions are contentious, primarily the possibility of ordering a claimant to receive counselling (the provision to mandate respondents to counselling is used, but not often). Shelter directors were the most vocal in suggesting that ordering the claimant to counselling constitutes blaming the victim. The only other interviewee that commented on this provision was a judge who noted that there may be merit in this provision but it has only been used five times. Given the contentious nature of this, and the lack of evidence of its utility, it should be deleted.

Similarly, although several stakeholders noted what were termed "frivolous" applications, there are other mechanisms to hold those who make false claimants accountable. It is not unreasonable to assume that the existence of a section in the *PAFVA* regarding frivolous and vexatious complaints may deter victims of family abuse from making valid complaints under the *Act* for fear that their complaints might be construed as frivolous or vexatious.

1.4.4 Protection Using EPOs and QBPOs: Responding to Breaches

Criminal and civil remedies to address domestic violence are only viable if breaches are addressed swiftly and respondents held accountable. Past research on protection orders and the strong voices of the women claimants we interviewed showed this to be a significant problem. While the key stakeholders noted that breaches that result in physical violence may be dealt with, breaches using threats, and harassing to the point of stalking also need to be handled swiftly and with the support of not only the police but the judiciary. The mechanisms to hold respondents accountable for breaching the orders are primarily in place. They need to be utilized. Although the power to arrest respondents who breach protection orders is typically noted in the orders themselves, another suggestion is to explicitly state this power in the *PAFVA*.

1.4.5 Training/ Education

Training and education were clear priorities when the *PAFVA* was introduced in 1999. A significant number of the police and child welfare interviewees were trained at that time and remember the training as useful. However, with changes in staffing and best practices developed to streamline the use of the legislation, training and education must continue to be available.

Cross-training, utilizing professionals with expertise in different facets of domestic violence is one method that is often productive. Another scenario is to utilize professionals that have championed the legislation and developed best practice to train and share their enthusiasm with other professionals in the same fields.

1.5 Summary of the Evaluation Outcomes

The applicability of the *PAFVA* evaluation results to the logic model developed by the *PAFVA* Evaluation Working Group is implicit in the previous sections and recommendations. This section highlights the outcomes with respect to Communication, Protection using EPOs, Protection using QBPOs and Training as they affect the primary targets: victims of violence that could ultimately become claimants for EPOs, the children that may or may not be included in a protection order, the perpetrators of violence and the community/system.

1.5.1 Communication

With respect to communication, the key question about immediate outcomes is to what extent victims, children, and perpetrators are knowledgeable and aware of legislative options and family violence. With only a limited number of interviews with applicants and none with respondents, we must rely on the key informant interviews to approximate this outcome. Across the justice and community interviews, the general consensus was that those immediately affected by family violence had little knowledge of EPOs as option to address their safety needs.

A further question is whether utilizing the civil legislation assists in de-escalating violent incidents in the short term? This outcome can only be assessed through the perceptions of the four applicants and the justice and community key informants. While some perpetrators could not be trusted to obey the EPO's, the majority abided by the provisions, at least in terms of reported breaches. Finding an appropriate strategy to

identify who can and cannot be trusted to obey the orders would not only make the respondents safer but would result in more appropriate police action against perpetrators that will not follow such constraints.

Once the key target groups, especially victims, have knowledge about civil remedies, do they utilize the legislation? This question is clearly tied to the first, in that without knowing about this option, the legislation will not be used extensively. The outcome that the numbers of EPO applications are increasing yearly suggests that knowledge of the civil legislation as an option is growing and that individuals are taking advantage of this strategy.

The utilization of EPOs in Alberta is similar to Saskatchewan that has legislation that parallels the Alberta model (personal communication, Rod McKendrick, Saskatchewan Justice) but substantially less than Manitoba (personal communication, Jane Ursel, RESOLVE Manitoba) in the 2002 calendar year. Manitoba's legislation, which has some unique characteristics, was applied for and granted at least three times as often in 2002, suggesting that it is a model worthy of investigation if the *PAFVA* is reviewed.

Does knowledge of the civil legislation shift the attitudes of perpetrators from viewing violence as acceptable to non-acceptable? Do they see this as an opportunity to connect with treatment and to break the cycle of abuse? Without having the opportunity to interview respondents of the orders, these questions cannot be addressed. The interviews with the key community and justice stakeholders did not speak to whether or not these outcomes occur.

Are community members and workers aware and knowledgeable about the civil legislative options? The consensus across the key stakeholders is that, while some select groups are extremely knowledgeable about options and domestic violence, this remains a significant gap, which ultimately is a major barrier to utilizing the *PAFVA* legislation. Even the police and child welfare workers that are mandated to apply for orders on behalf of clients had mixed levels of knowledge, ranging from not knowing about the legislation at all, not seeing the potential benefits of using it to being quite knowledgeable and committed to its use.

Does utilizing the civil legislation prevent family violence from occurring in future? While a number of key stakeholders were dubious that the legislation can prevent violence occurring in future in the long-term, especially with respect to new partners, others commented that the majority of respondents obey the provisions.

Further, a number of the stakeholders consider that the legislation is one of a number of strategies that has raised the profile of the serious nature of domestic violence in their regions.

1.5.2 Protection Using EPOs

When EPOs are granted, do they provide safety and security to victims and their children during the initial seven day period before being reviewed at the Court of Queen's Bench? Several police officers commented that the majority of respondents do not breach the provisions of an EPO, meaning that most claimants and their children are safe. Notably though, several shelter directors had direct experience with women that had

obtained an EPO but left their homes to go to emergency shelters because they did not feel safe. Without more interviews with claimants that were granted EPOs it is difficult to conclude that an immediate outcome of receiving an EPO is safety and security.

The narratives from the key stakeholders raised a number of concerns about individuals that were granted the order only to find that the provisions held little weight and the respondents were not held accountable for breaches. The key informants described about one-quarter to one-fifth of respondents as breaching the emergency protection orders, a cohort that remains of considerable concern, Gondolf (2002) has similarly identified 20% of those mandated to treatment by the criminal courts as re-assaulting victims early on in the process and not being amenable to intervention. These perpetrators are particularly dangerous and it will be important to develop mechanisms to identify them and to provide options other than EPOs for these victims.

Do EPOs assist perpetrators of violence in becoming more aware of their accountability, and does this subsequently interrupt the violence? Without having interviewed the respondents, one cannot conclude that abiding by the order's provisions can be interpreted as suggesting that the perpetrators are more aware of their accountability for the violence. Nevertheless, for the partners and children of the respondents that abided by the EPO provisions, the violence is interrupted, and the children's exposure to domestic violence in the short term is prevented.

Finally, whether utilizing EPOs creates the immediate outcome of a decrease in family violence in the community is mostly true on a family by family basis, but is hard to determine in a broader sense.

1.5.3 Protection Using QBPOs

The third component of the logic model is the provision of QBPOs on review within seven days of granting an EPO. The majority of EPOs reviewed at Queen's Bench were granted or varied, a positive outcome. Do the provisions of the QBPO give victims and their children/youth better access to money and their residences than before this option was available? The court file review demonstrated that few of the possible provisions available as remedies are utilized, raising questions about the extent to which claimants are aware of these options.

The questions about outcomes related to QBPOs are identical to the ones already mentioned with respect to EPOs, such as do the victims of family violence feel safer and more secure with a QBPO in place and are children/youth less exposed to family violence? Again, with a limited number of claimants available to be interviewed it is difficult to answer these questions. Both women whose EPOs became QBPOs reported breaches, with few or only minimal consequences for their ex-partners from the judicial system.

Does the QBPO prevent future violence for that particular family? To what extent are they breached and what is the response of the criminal justice system to such breaches. This evaluation did not collect data about breaches directly; in fact, it would be difficult to do so. A number of the justice and community stakeholders raised questions about breaches. The police in rural and remote regions noted that they may not be able to adequately deal with breaches. Other stakeholders described the police as limiting their

responses to only those breaches involving physical violence as compared to ones involving threats. Other stakeholders raised concerns about the judicial response to breaches, which they perceived as inadequate and reflecting a lack of understanding of the dynamics of intimate partner violence.

Does the QBPO assist perpetrators in accepting responsibility for their violent behaviour? This question was to have been addressed in the respondent interviews and since none came forward to provide their perspectives, we have no answer to this question at present.

Is there decreased family violence in the community as a result of the QBPOs being utilized? Again, this was difficult to determine based on the sources of information. Nevertheless, several justice informants are of the opinion that such orders are adhered to by many respondents.

1.5.4 Is the *PAFVA* Training Effective?

Outcomes for the fourth major component, training, were previously addressed in section 1.4.5. However this section will document the responses as related to the specific evaluation questions about training. Notably, there is some overlap with the previous sections related to the logic model.

Do the police, JPs and community agency representatives know about family violence and the provisions of the civil legislation and, in addition, do the police, child welfare workers and JPs apply the provisions of the legislation? The key informant interviewees clarified that, while many police and child-welfare workers know about family violence issues, understand the provisions of the legislation and can apply the provisions, about half prefer not to utilize the legislation. As such, they are not offering EPOs as an option when either criminal charges are not applicable or charges have been laid but the victim remains at risk from the perpetrator. Similarly a number of Justices of the Peace utilize the legislation appropriately but others do not seem to understand its value to victims of domestic violence.

Do community agency representatives provide services to victims of family violence including guidance on utilizing the legislation? While some of the key stakeholders from community agencies specific to domestic violence had a good grasp of the legislation, a number had very limited knowledge of it. Given their key contact with the large number of victims of domestic violence that never involve the police or child welfare, the mandated reporters, broadening or expanding the training to include these agency staff is recommended.

Do Justices of the Peace hear police and child welfare applications for EPOs and subsequently grant them? The court files review demonstrates that when JP’s hear applications the majority are granted. However, it is likely that files are only created for appropriate applications, so we cannot determine how many cases were not heard by JPs and no file was opened. The key informant interviews suggest that there is variability among JPs as to their willingness to hear and grant applications. This raises the question of whether their training adequately makes the case to utilize the legislation.

Another outcome is that the police would deter offenders from committing additional acts of violence by attending to breaches of the orders. While there was no

direct data to answer the question of whether this is the case, the interviews with the two claimants with EPOs and QBPOs and interviews with the key stakeholders suggested that this varies. Some police services are cognizant of the need to take any breaches seriously, others attended to only physical threats.

Two important potential outcomes of implementing the legislation are that protection orders prevent future domestic violence and that family violence is addressed more adequately. The evaluation did not allow the opportunity to address these questions directly, but rather through the perspectives of the key justice and community stakeholders. As might be expected, the response to this query was mixed. Some stakeholders did not perceive the orders as preventative for two reasons: the claimant and respondent often reconcile and violence may reoccur and the respondent may breach the order.

However, a larger group was more optimistic that the orders can make a long-term difference for at least some individuals. The fact that the violence is brought into the public domain and that the protection order provides a period for reflection for the couple are both seen as potentially impacting some to stop their abusive behaviours.

1.6 Conclusion

To conclude, the results of this summative evaluation support the effectiveness of the *PAFVA* legislation in principle, but suggest that the afore-mentioned recommendations for revisions be considered to address several noted challenges. Two groups that remain of concern are those that attempt to but cannot access protection orders and those that are granted orders, but the respondent breaches the conditions. Protection orders are only as good as the extent to which breaches are addressed. The concern that civil and criminal orders can provide false hope for protection has been raised across North America.

Despite these important caveats, in general, the *PAFVA* legislation is perceived as having the potential to address the needs of a significant group of victims of violence: those where criminal charges are not applicable. Further, their application in conjunction with the police laying criminal charges when appropriate is considered an exceptional strategy to better protect victims and their children from violent partners.

With attention to the further concerns and recommendations for revisions to the *PAFVA* legislation that have arisen from the voices of the key stakeholders, the legislation can become more effective. The stakeholders graciously took time to outline their perceptions of what is working well, what remains a challenge and what are the gaps with respect to the *PAVFA* in the hope that their perceptions and suggestions would improve the legislation to ultimately protect the majority of victims.

2.0 History of the *PAFVA* and other Canadian Civil Legislation

This chapter describes the history of Alberta's Protection Against Family Violence Act and other Canadian provincial and territorial civil protection orders as context for the current review of the *PAFVA*. A literature review is provided on the efficacy of protection orders across Canada and the United States. The final section introduces the current evaluation of the *PAFVA*.

2.1 The History of the *PAFVA* Legislation

The severity and pervasiveness of domestic violence in Alberta and the creation of civil domestic violence legislation in other provinces, such as Saskatchewan's *Victims of Domestic Violence Act* and Prince Edward Island's *Victims of Family Violence Act*, prompted discussions of similar legislation in Alberta in the 1990s. A report by Statistics Canada (1993) indicated that Alberta had one of the highest lifetime rates of wife assault. During the same period, Alberta was experiencing an alarming rate of domestic homicides[1].

In the mid-1990s, the Alberta Law Reform Institute (ALRI) published two reports outlining the need for domestic violence legislation in Alberta. In June 1995, the ALRI released a report for discussion entitled *Domestic Abuse: Toward an Effective Legal Response*. The discussion report was prepared following consultations with victims and perpetrators of domestic violence, service providers, members of Aboriginal and immigrant communities, and legal and government personnel. These consultations brought to light difficulties with the existing protective remedies for domestic violence, leading the ALRI to conclude that protection orders "need to be cheaper, quicker and easier to get; they need to be clearer and easier to interpret; they need to be more enforceable; and they need to be drafted with a greater awareness of the real needs of the victim (at p. 44)."

After reviewing legislation in other jurisdictions, including Saskatchewan, the discussion report recommended the creation of specialized domestic violence protection legislation, which would be available in situations involving physical, sexual and emotional abuse, destruction of property, and harassment. It was recommended that applications for protection orders under the legislation could be brought by individuals in relationships characterized by "indicia of vulnerability": dependency, intimacy, emotional intensity, trust, reduced visibility, and ongoing physical proximity (at 103). The discussion report noted that same sex relationships met many of these criteria, and concluded that there was no reason why persons in such relationships should be excluded from the scope of the legislation. The discussion report recommended that the legislation should allow for protection orders with the following conditions: comprehensive no-contact orders, temporary possession of assets, emergency financial support, and costs.

The ALRI final report, *Protection Against Domestic Abuse*, responds in part to Bill 214, discussed below. The ALRI also received numerous responses to its discussion report that are addressed in the final report.

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[1] See Federal-Provincial-Territorial Ministers Responsible for the Status of Women, *Assessing Violence Against Women: A Statistical Profile* (2002) at 17, showing that Alberta had the third highest rate of spousal homicide in Canada from 1974 to 2000 (1.4 per 100,000 couples).

The ALRI final report recommended a two tiered system of protection orders: emergency protection orders, to be within the jurisdiction of the Provincial Court and Justices of the Peace, and non-emergency orders, which would be granted by the Court of Queen's Bench. Like the discussion report, the final report recommended the inclusion of emotional abuse, and, in response to comments received, recommended inclusion of financial abuse as well. With respect to concerns that the latter forms of abuse were too broad, the ALRI recommended that domestic abuse be limited to "conduct that threatens or interferes with the physical, sexual or emotional integrity of the person subjected to it, or makes that person incapable of independent functioning" (at p. 48). In the view of the ALRI, this would exclude trivial conduct.

The final report recommended that civil protection legislation apply to "cohabitants", those residing or formerly residing together in an intimate, spousal or family relationship, and to those who were parents of children, regardless of whether they had ever lived together. The report recommended against "mutual orders" – those that would provide protection orders for both parties on the application of only one.

In terms of remedies, the final report recommended jurisdiction to order no-contact with the claimant and, where there was a risk of harm, to her child(ren), restraint from attending at, and removal of the respondent from the residence, temporary possession of personal property, and payment of financial relief from the respondent to the claimant. The ALRI decided against a provision that would require the respondent to receive counselling, as this was seen to be a matter within the domain of the criminal courts. In response to comments received, it was also recommended that the legislation create the offence of bringing a "false or malicious" application.

In February 1996, Liberal MLA Alice Hanson introduced a private member's bill (Bill 214 – *Victims of Domestic Violence Act*) in the Alberta legislature. The bill was modeled after the legislation in Saskatchewan. After consulting with government, the ALRI, and interested stakeholders, amendments to the Bill were made and introduced in the legislature. In May of 1996, Bill 214 received strong support from both Liberal and Conservative members and was passed unanimously at second reading. However, after several more amendments were made and re-introduced in the legislature in August of 1996, Bill 214 was removed from the Order Paper by Conservative MLA Jocelyn Burgener. According to Burgener, the Bill was dropped because more input from the public was needed and there were too many amendments to deal with. In October 1996, Burgener stated that the Alberta government would not introduce family violence legislation in the province, as it was no longer part of the government's justice agenda. In February 1997, an amended version of Bill 214 was introduced by Liberal MLA Terry Kirkland (Bill 209 – *The Domestic Abuse Act*) but did not go forward as an election was called. Four months later, the *Domestic Abuse Act* was reintroduced again as Bill 218 by Liberal MLA Laurie Blakeman.

In July 1997, the Alberta government initiated an extensive public consultation process led by MLA Jocelyn Burgener. A discussion paper was distributed to 300 citizens and advocacy groups across Alberta to obtain feedback on the government's newly proposed family violence legislation (Bill 19 – *Protection Against Family Violence Act*). More than 120 responses were received and a consultation report was compiled (see *Protection Against Family Violence Act Consultation Report* ("*Consultation Report*")).

The public input was reviewed by an interdepartmental committee and its recommendations were forwarded to the Community Services Standing Policy Committee for review. Bill 19 - *Protection Against Family Violence Act* was introduced in the Legislature on March 2, 1998 by Burgener. Bill 19 received the support of all parties in Alberta, although opposition members critiqued certain aspects of the proposed legislation. Opposition MLAs also expressed concern as to whether the legislation would be adequately funded by the government, and whether there would be sufficient levels of training for justice system personnel and public education. The Bill received Royal Assent on April 30, 1998, and the *Act* (*PAFVA*) came into effect on June 1, 1999.

The delay in the *Act* coming into force was to allow the government to make preparations for the *Act's* implementation. This included establishing a provincial implementation committee, training for the various police forces across the province and developing and disseminating public education/information material. Community information sessions were also hosted throughout Alberta for local service providers. Particular attention was focused on Aboriginal persons, cultural minorities, and deaf and blind communities to ensure that systemic barriers were addressed. At this time, the development of appropriate monitoring and evaluation mechanisms were contemplated.

2.2 Putting PAFVA into Context: Other Protective Remedies for Family Violence

Before the *PAFVA* came into force, there were several protective remedies available under the civil and criminal justice systems. An excellent review of these remedies and their benefits and drawbacks can be found in the ALRI's discussion report *Domestic Abuse: Toward An Effective Legal Response* at pages 14 to 30.

The main protective remedy available through the civil courts is the restraining order. Restraining orders are available by application in the Court of Queen's Bench supplemental to another action against the perpetrator of abuse - most commonly, a divorce action, or an action for assault and battery. The ALRI found that most of the underlying actions were not pursued after the restraining order was obtained, suggesting that it was the latter remedy that was truly wanted. However, the claimant would still have to bring the underlying action, with its associated requirements and costs.

Restraining orders typically contain no-contact and no-communication provisions, along with a range of other possible conditions at the discretion of the judge, and are usually made for a duration of a few months. Breach of a restraining order is treated as civil contempt under the *Alberta Rules of Court*, Rules 703 and 704. While restraining orders may be obtained on an *ex parte* basis in urgent situations, they are only available during the working hours of Queen's Bench. Moreover, this is a costly remedy to obtain, as a lawyer is typically required to deal with the complexities of the application. Calgary has a program available to assist claimants with obtaining these orders, the Court Preparation and Restraining Order Program through Calgary Legal Guidance, and legal aid may cover the costs in other cities for financially disadvantaged victims.

A second civil protective remedy available to some claimants is an order for exclusive possession of the matrimonial home. An exclusive possession order is granted under the authority of the *Matrimonial Property Act*, and is only available to those defined as "spouses", namely, those who are married. According to the ALRI, this

remedy "may be inadequate on its own", as it simply prohibits contact between the spouses at or near their home.

Several criminal remedies are also available to victims of family violence. First, s. 810 of the *Criminal Code* permits applications for peace bonds in circumstances where a person "fears on reasonable grounds that another person will cause personal injury to him or her or to his or her spouse or child or will damage his or her property." After a victim or a person acting on her behalf lays an information before a justice of the peace, a hearing is held before a provincial court judge or justice of the peace to assess the existence of "reasonable grounds." If reasonable grounds are established, the judge may grant a recognizance ordering that the respondent "keep the peace and be of good behaviour" for a period of up to one year.

The recognizance may contain other conditions as well, including no communication and no contact orders relating to the victim and her child(ren). No contact / no communication orders can also be made as a condition of bail if the respondent is arrested for a criminal offence, or as a condition of probation if the respondent is convicted of an offence. Breaches of peace bonds, bail conditions and probation are all offences under the *Criminal Code*.

Thus, a patchwork of remedies for family violence existed before the *PAFVA*, and most such remedies were available in limited circumstances, for a limited length of time. The ALRI noted that "the complexity and lack of coherence of the court system was identified as a significant problem giving rise to a great deal of confusion in victims of abuse", as was the lack of advocacy and support services for victims (*Domestic Abuse: toward an Effective Legal Response* at 47).

These remedies still exist after the *PAFVA*, and they continue to be used in some circumstances. The relationship between the continued existence of other remedies and the utilization rate of the *PAFVA* will be explored later on this report.

2.3 Civil Domestic Violence Legislation in Canada

Five other jurisdictions in Canada have now proclaimed civil domestic violence legislation, Saskatchewan (*Victim's of Domestic Violence Act*, February 1995), Prince Edward Island (*Victim's of Family Violence Act*, December 1996), Manitoba (*Domestic Violence Stalking, Prevention, Protection and Compensation Act*, September 1999) and Yukon (*Family Violence Prevention Act*, November 1999) (Roberts, 2002)); and Nova Scotia (*Domestic Violence Intervention Act*, April, 2003). Ontario (2000) has passed but not yet proclaimed similar legislation. New Brunswick, Quebec and the Northwest Territories are reportedly considering implementing similar legislation (The Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation 2003).

Reviews of civil domestic violence legislation have taken place in Saskatchewan (Turner, 1995), Prince Edward Island (1998) and the Yukon (Bala & Ringseis, 2002). The data collection methodology of these reviews included surveys, file reviews and interviews with justice stakeholders (JP's, police, community and legal resources), focus groups (Yukon review) and victim interviews were conducted in the Saskatchewan reviews.

In the first 14 months that the PEI Act was in force, there were 64 applications for orders of which 47 were granted. Between December 1996-March 2001, there were 125 Emergency Protection Orders (EPOs) granted in total (Bradford and Associates, 1998). In Saskatchewan's review (1996), 295 Emergency Intervention Orders (EIOs) were granted between February 1, 1995 and March 31, 1996. Between January 1, 1997 and December 31, 1997 a further 394 EIOs were reviewed. In the first two years that the Yukon's *Family Violence Protection Act* came in use, 52 applications for EIOs were obtained, 31 in the first year (November 1999-October 30, 2000) and 20 in the second year. A further 3 EIO applications were made between October 31, 2001 to May 30, 2002. (November 2000-October 30, 2001) (Bala & Ringseis, 2002, p. vi). A Territorial judge confirmed all but one of the EIOs.

EIOs are used in PEI, Saskatchewan and the Yukon, however Victim Assistance Orders (VAO) are not. It is speculated that this is due to the requirement of legal representation and insufficient legal aid resources (The Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation 2003). In the Saskatchewan and PEI reviews (1996), lawyers are reportedly more comfortable and familiar with other civil legislation options and would prefer to use legislation that covers custody, maintenance and restraining orders as a "whole package" (Roberts, 2002). Additionally, training reportedly focused in EIOs instead of VAOs and this is speculated as the reason why they are not used.

In the PEI review, the civil legislation was viewed as an important tool and the flexibility of the Act was praised, as was the minimal paperwork. Also, since the process is expeditious, it reportedly may be more appealing to some victims of domestic violence, particularly those who do not want their partners charged. The use of this legislation was continually referred to as a beneficial first step toward a victim regaining control and moving away from their abusive partners. Similarly, in the Saskatchewan review (1999), participants agreed that the legislation helps victims of domestic violence by providing immediate protection and allows the victims to remain in the family home and community. Additionally, the legislation conveys the message that domestic violence is a serious concern and will be treated as such by the criminal justice system.

Half of the police in the Saskatchewan review (1999) reported using EIOs "in instances where there is not enough evidence to lay charges but it is clear that some action is required. Similarly, a few officers stated that they use orders when circumstances demand some intervention but the victim does not wish to pursue criminal proceedings" (p. 25). Ten of 13 officers commented that the legislation had no effect on their charging policy in domestic violence cases and 12 reported that it changed their practice "by providing police with an additional tool to use in dealing with domestic violence" (p. 26).

Victims are reportedly highly supportive of this legislation in all jurisdictions that have enacted civil domestic violence legislation and completed evaluations. Victims reportedly appreciate the immediacy of the protection afforded using this legislation as well as conditions such as exclusive occupation of their home and temporary custody of their children (The Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation 2003).

Challenges noted in the reviews of PEI, Saskatchewan and Yukon included the lack of training in and use of the Act by the police, attributed to the rapid officer turnover. The PEI police noted that the procedure for completing the EIO process needed to be streamlined. Other police officers reported that they prefer to use the Criminal Code as the abuser may reoffend with another victim in the future and penalties under the Act were not as effective as those tied to the Criminal Code. Concerns raised by key stakeholders include application to First Nations people living on reserve with respect to inability of sole occupancy conditions for the victim and inconsistency and lack of clarity in the Act. Other challenges include the lack of common identification system for EIOs at the police and court levels, inconsistencies in police files relating to EIOs (usually recorded as breach of a court order), thus the number of breaches were not able to be determined (p. 6-7, 32) as is the case in PEI (1998, p. 27).

In summary, the legislative reviews suggest that more police training is needed to facilitate the police becoming more aware of the civil legislation and to suggest it to victims of domestic violence where applicable. They also support developing a common understanding among justice personnel of when it is most appropriate to use the legislation. Finally, more public education is needed to inform victims of this legislation (The Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation 2003).

2.4 The Previous Evaluation of the *PAFVA* Legislation

The Howard Research report (September, 2000) conducted what was to have been the first of a three-phase evaluation of the implementation and impact of the *Protection Against Family Violence Act* (*PAFVA*). The second and third phases of the evaluation were to have been implemented in the following two years but were not. The report focused on the first 15 months of the implementation of the Act (June 1999-August 2000). The data collection methods included surveys, file reviews and interviews with justice stakeholders (JP's, police, community and legal resources). Interviews with victims of family violence were postponed until the later phases of the evaluation.

The report looked at the utilization and the impact of the new legislation. Between June 1999-March 2000, 122 EPOs were confirmed, 17 EPOs were varied, 54 EPOs were revoked, and 22 QBPOs commenced (i.e. direct applications).

The majority of the stakeholders interviewed supported the new legislation and the reported benefits of *PAFVA* over other available remedies. The immediacy and responsiveness of the legislation, the comprehensiveness of conditions, and enforcement were seen as providing a valid option for responding to family violence. The stakeholders suggested that there had been some progress such as an increased awareness of family violence issues among service providers, changes in attitude, and reduced family violence incidents[2]. Stakeholders recommended improvements in the areas of legislation (i.e. broaden definition of family violence to include foster children, same-sex couples, and caregivers who are not family members; the word "emergency" needs to be explicitly defined in the Act, and direct applications for QBPOs need to be made more accessible to victims); process improvements (i.e. improve technology for telephone applications,

[2] Some police believe that the *PAFVA* legislation enables them to intervene before a violent incident occurs.

minimize length of time required to make applications, simplify paper work, etc.); and additional training and follow-up.

The Howard report concluded that the new legislation was being under-utilized. The stakeholders suggested that the lower than anticipated utilization rates were the result of low overall awareness, police reluctance to apply for orders, and JP's reluctance to grant orders. Recommendations to increase the utilization rate include increased training and awareness campaigns.

2.5 The Current Evaluation of the *PAFVA*

The Howard Report was to have been the first of a three-phase evaluation of the implementation and impact of the *Protection Against Family Violence Act* (*PAFVA*); however, the second and third phases of the evaluation were not conducted. The current summative evaluation of the *PAFVA* legislation updates the Howard research, focusing on the two and a half years from 2002 to June of 2004. On the basis of its prior research on the *PAFVA*, RESOLVE Alberta was contracted by the Alberta Ministry of Children's Services to conduct a more comprehensive evaluation of the *PAFVA*.

The RESOLVE tri-provincial network had recently completed a major research project entitled, "Evaluating the Justice and Community Response to Family Violence across the Prairie Provinces". The four-year research project (2000 to 2004) evaluated the efficacy of the justice response to intimate partner violence across the three prairie provinces including a focus on provincial legislation including the *PAFVA*. That research was funded by the Community University Research Alliance (CURA) initiative of SSHRC for $600,000 and a grant from the Alberta Law Foundation. As part of this project, RESOLVE Alberta had previously tracked applications for civil protection orders under the *PAFVA* in the 2002 calendar year in selected Alberta locations: Calgary, Edmonton, Wetaskawin, Lethbridge and Fort McMurray in 2002. Having already developed the court file data collection tools and interview schedules put RESOLVE Alberta in a unique position to update the *PAFVA* legislation for the purposes of the Alberta Government's review of the legislation.

2.5.1 The Purpose of the Current Evaluation

The current research is a summative evaluation of the *PAFVA* legislation. Summative evaluations are conducted to assess the ultimate success of a program (whether or not it has achieved its objectives) often to determine whether or not it should be continued (Patton, 1990; Rubin & Babbie, 1993). Summative evaluations examine the program outcomes one by one (often identified in a program logic model) to assess whether these are achieved. While outcomes are most often assessed using quantitative methods, authors such as Patton (1990) and Chambers, Wedel and Rodwell (1992) argue that using qualitative methods, such as interviews, can both adequately address whether the program is effective and can expand upon the quantitative data analysis. The current evaluation utilized such a mix of quantitative and qualitative data to evaluate the impact of implementing the *PAFVA* legislation.

In addition, however, the current evaluation gathered information related to the process of obtaining an EPO through the key informant interviews. Arguably, focusing solely on outcomes ignores the often more interesting question of why or why not the

outcomes were achieved. Further, a number of the members of the *PAFVA* Evaluation Working Group were interested in questions of both process and outcome in assessing the extent to which the *PAFVA* legislation had achieved its goals. As such, more process oriented questions were included in the key-informant interview schedules that were developed in consultation with the Working Group.

2.5.2 The *PAFVA* Logic Model

From May to July 2004, the *PAFVA* Evaluation Working Group, including representatives from RESOLVE Alberta, updated a logic model of the *PAFVA* process to assist in the current review of the legislation. The four key components of the evaluation include: Communication, Protection using EPOs, Protection using QBPOs and Training. The first three components each have four levels. In these, the first level reflects the primary targets, victims of violence that could ultimately become claimants for EPOs. Level 2 was the children that may or may not be included as in need of protection by the legislation. Level 3 is the perpetrators of violence and Level 4 is the Community/System.

The Working Group considered the four components with respect to inputs, activities, outputs, immediate outcomes, intermediate outcomes and long-term outcomes. The current evaluation was conceptualized to assess the four major components of the *PAFVA*. The logic model became the core framework within which the current evaluation was conceptualized. The descriptions and key questions for each component are listed below:

Component 1: Communication. The activity involved with communication is providing information to communities about the *PAFVA*. The outputs are communication materials such as brochures. Questions that relate to the outcomes for this component are:

- Are the victims of domestic violence (both adults and children/youth) and the perpetrators aware and knowledgeable about the option to request an emergency protection order under the *PAFVA* legislation?
- Are community members and workers aware and knowledgeable about the civil legislative options?
- To what extent do victims of domestic violence utilize the civil legislation?
- Does utilizing the civil legislation assist in de-escalating violent incidents in the short term?
- Does knowledge of the civil legislation shift the attitudes of perpetrators from viewing violence as acceptable to non-acceptable? Do they see this as an opportunity to connect with treatment and to break the cycle of abuse?
- Does utilizing the civil legislation prevent family violence from occurring in future?

Component 2: Protection using EPO's. The activities involve reporting family violence, assessing for the appropriateness of an EPO, investigating and the application process including the outcome of the application. The output is an emergency protection order. Questions that address the outcomes of this component include:

- Are the victims of domestic violence (both adults and children/youth) safer and more secure with an EPO in place for the one to seven day time period?
- Is there a decrease in subsequent violence because of the civil response?
- Are the perpetrators of family violence more aware of their accountability with an EPO in place?
- Is the violence interrupted with an EPO in place?
- Is there a decrease in family violence in the community?

Component 3: Protection using a QBPO. The activities involve attending the review of the EPO at the Court of Queen's Bench, the court ruling and dealing with breaches. Questions that relate to this component include:

- Do the victims of family violence feel safer and more secure with a QBPO in place?
- With the QBPO in place, are children/youth less exposed to family violence?
- Do the provisions of the QBPO give victims and their children/youth better access to money and their residences than before this option was available?
- Does the QBPO prevent future violence for that particular family?
- Does the QBPO assist perpetrators in accepting responsibility for their violent behaviour?
- Is there decreased family violence in the community?

Component 4: Training. The activities include developing and implementing training modules for police, justices of the peace and representatives of community agencies. The outputs are the training materials, presentation materials and videos. The questions that relate to outcomes for this component include:

- Do the police, JPs and community agency representatives know about family violence and the provisions of the civil legislation?
- Do the police, child welfare workers and JPs apply the provisions of the legislation?
- Do the police that receive and investigate reports of family violence suggest or request EPOs when appropriate?
- Do the police deter offenders from committing additional acts of violence (breaches of the orders)
- Do JPs hear police and child welfare applications for EPOs?
- Do JPs grant EPOs to police and child welfare workers?
- Do community agency representatives provide services to victims of family violence including guidance on utilizing the legislation?
- Is family violence addressed more adequately?

Having developed these key questions stem from the program logic model, the next step was to identify what sources could provide the answers. Table 1 illustrates the sources of information used to gather information about the immediate and intermediate outcomes. Future outcomes were considered more difficult to access, and were limited to a question to the key justice and community stakeholders about whether they considered that the emergency protection orders prevent violence in future.

2.5.3 Instrument Development and Sampling

After consulting with the *PAFVA* Evaluation Working Group, it was determined that the current evaluation would collect data on all Alberta applications under the *PAFVA* from January 1, 2002 to the end of June 2004, and for 2002 in the locations not already surveyed. In the summer of 2004, data was collected from court files from the eleven locations of the Court of Queen's Bench across Alberta,[3] using a tracking form developed for the CURA project. The information gathered includes demographics of the claimant and respondent, whether children are included in the order, the nature of the abuse giving rise to the application, reasons for allowing or denying the applications, and the conditions ordered.

RESOLVE Alberta had previously conducted 70 interviews with key informants in Calgary and Edmonton as part of the CURA project. The interviewees included justice personnel (police, Crown prosecutors, probation officers and lawyers), and community representatives (staff from shelters, counselling agencies with specific domestic violence services and social workers with specialized police teams). The interviews inquired about impressions of how well the legislation is being utilized and whether it is working as anticipated (see Appendix Four).

In consultation with the *PAFVA* Evaluation Working Group, it was agreed that RESOLVE would conduct additional interviews with claimants and respondents, justice and community personnel outside of Calgary and Edmonton, and some personnel not previously interviewed (justices of the peace, judges, court administrators, child welfare workers and Victim Services staff). Two new interview guides, with questions more specific to those whose roles within the justice system make them much more likely to be knowledgeable about the processes and outcomes of the PAFVA legislation, were developed in consultation with members of the *PAFVA* Evaluation Working Group (see Appendix Two and Appendix Three). Ethics approval was obtained from the University of Calgary for the new interviews, which commenced in August 2004 and continued until December 2004.

Police, child welfare workers and Victim Services staff were contacted using a snowball sampling method. RESOLVE Alberta research assistants contacted the respective offices in every region in the province to inquire who might be most

[3] The locations of the Court of Queen's Bench in Alberta are: Calgary, Drumheller, Edmonton / Hinton, Fort McMurray, Grande Prairie, High Level / Peace River, Lethbridge, Medicine Hat, Red Deer, St. Paul, and Wetaskawin. Each of these centres contains files that originated in the area surrounding it. For example, the Calgary Court of Queen's Bench is fed by the communities of Airdrie, Banff, Calgary, Canmore, Cochrane, Didsbury, Okotoks, and Tsuu T'ina Nation.

Table 1: Evaluation Fit with PAFVA Logic Model

Component	Level 1 Primary Targets (women)	Level 2 Secondary Targets (children)	Level 3: Perpetrators	Level 4: Community/System
Communication	Knowledge and awareness of legislative options and family violence /use of civil response: **Directly through**: -Key community informant interviews	Knowledge and awareness of legislative options and family violence / reporting incidents of family violence: **Directly through**: -Specialized justice interviews, especially police and child welfare -Key community informant interviews	Knowledge and awareness of legislative options and family violence/shift in attitudes: **Indirectly through**: -Specialized justice interviews -Key community informant interviews.	Knowledge and awareness of legislative options and family violence/community accepts responsibility for family violence: **Indirectly through**: -Specialized justice interviews -Key community informant interviews
Protection EPO	Safety and security increase control/ Use of civil responses: **Directly through:** -Interviews with claimants -Court data	Decrease exposure to FV: **Indirectly through**: -Interviews with claimants -Court data -Specialized justice interviews, especially police and child welfare -Interviews with respondents	Interruption of abuse/deterrence of further violence: **Directly through**: -Interviews with respondents -Interviews with claimants	Decrease FV in community/community accepts responsibility for family violence: **Indirectly through**: Key community informant interviews
Protection QBO	Safety and security increase control/ Use of civil responses: **Directly through:** -Interviews with claimants -Court data	Decrease exposure to FV: **Indirectly through**: -Interviews with claimants -Court data -Specialized justice interviews, especially police and child welfare Interviews with respondents	Interruption of abuse/deterrence of further violence: **Directly through**: -Interviews with respondents -Interviews with claimants	Decrease FV in community/modeling pro-social behaviour. Community accepts responsibility for family violence: **Indirectly through**: Key community informant interviews
Training	Systems Outcomes involving Police: **Directly through:** -Specialized justice interviews & Court data **Indirectly through**: -Interviews with Claimants	Systems Outcomes involving JP's: **Directly through** -Specialized justice interviews -Court data **Indirectly through**: -Interviews with Claimants	System's Outcome Involving Community Representatives **Directly through**: -Key community informant interviews	N/A

knowledgeable about the *PAFVA* legislation. Individuals that were recommended were contacted and invited to participate in the evaluation. Using this method, we interviewed representatives from across the province in every region, including every shelter director.

The names of court administrators and a select list of justices of the peace and judges were provided by Alberta Justice. Only eight judges offered to be interviewed and one of these subsequently declined because of a lack of familiarity with using the *PAFVA* legislation.

In addition, the project was to have conducted a number of in-depth interviews with individuals who have accessed the civil legislation to assess their perspectives on the impact to safety, utility of the law and how it was implemented. We also attempted to interview respondents. To invite claimants and respondents of emergency protection orders to be interviewed, we circulated posters and brochures to shelters across Alberta and to agencies that offer intervention groups to both men and women in Calgary and Edmonton. An advocacy organization for men in Calgary was also contacted, but declined to circulate the information to their members. Given the relatively small numbers of applications for EPOs in Alberta, that only four claimants contacted us to be interviewed was not unanticipated.

The small sample of applicants that were interviewed (four) and the lack of respondents altogether, limits the extent to which we can assess the outcomes listed in Table 1 specific to these central informants. As such, the perceptions of the key community and justice respondents about the safety of applicants and effect on respondents represent the major sources of information on these issues.

The interview summaries were analyzed using qualitative mainstream social work methodology (Tutty, Rothery & Grinnell, 1996), consisting of identifying the major themes and sub-themes. Recommendations that consider the legal analysis, the quantitative data analysis and the qualitative data analysis were developed.

To summarize, this summative evaluation of Alberta's *PAFVA* comprises three major research components:

- A legal analysis of the *PAFVA* legislation looking at the case-law decided under *PAFVA* and comparing the provisions with other similar provincial legislation, particularly Saskatchewan and Manitoba.
- An analysis of quantitative data collected from 981 court files of claimants for EPOs and QBPOs in 2002 until June of 2004. These represent the entire sample of EPO applications in Alberta for which files were created.
- An analysis of qualitative individual interviews conducted with 180 key stakeholders in Alberta.

3.0 The Literature on Emergency Protection/Intervention Orders

Over the past twenty years, a number of studies have evaluated civil protection orders, seventeen of which were reviewed for this literature review. Although many took place in the United States, their results can be seen as applicable to the Canadian context given the paucity of such research in this country. Of the seventeen studies, thirteen support the effectiveness of protection orders (Carlson, Harris & Holden, 1999; Kaci, 1994; Keilitz, Hannaford & Efkeman, 1997; Ptacek, 1999; Holt, Kernic, Lumley, Wolf and Rivara, 2002; Holt, Kernic, Wolf & Rivara, 2003; Fischer, 1992; Kinports & Fischer, 1993; Fischer and Rose, 1995; Johnson, Luna & Stein, 2003; Gist, McFarlane, Malecha, Willson, Watson, Fredland, Schultz, Walsh, Hall & Smith, 2001; McFarlane, Malecha, Gist, Watson, Batten, Hall & Smith, 2004; Humphreys & Thiara, 2003).

The results of three studies suggest that civil protection orders are not effective (Harrell & Smith, 1996; Klein, 1992; Adhikari, Reinhard & Johnson, 1993) and one reported mixed results (Grau, Fagan & Wexler, 1985). Several of these studies will be presented in more detail suggesting on the whole that women experience less domestic violence with protection orders in place, based upon self reports, police reports, and reports from key stakeholders.

Holt et al. (2002) assessed associations between obtaining a protection order and the risk of subsequent intimate partner violence as reported to the police. This was a retrospective cohort study of 2691 adult female residents of Seattle, Washington with an incident of male intimate partner violence (both physical and psychological) reported to police between August 1, 1998 and December 31, 1999 who had not obtained a permanent protection order during the last 12 months. Women in Seattle Washington first apply for a temporary protection order which is granted by a judge for two weeks before they return to court review that can result in a longer term protection order that can last up to a year or more. These “permanent” protection orders were associated with an 80% reduction in police-reported intimate partner violence in the 12 months after an initial incident. Also, women with permanent protection orders were less likely than those without orders to be physically abused. Permanent, but not temporary protection orders are associated with a significant decrease in risk of police reported violence against women by their male intimate partners.

Several additional studies have documented that once protection orders are obtained, further violence is decreased. Kaci (1994) surveyed 137 individuals by mail one and four months following temporary or permanent protection orders. Even though the response rate was low (26% at 1 month and 10% at 4 months), 87% of the women at one month and 100% at four months reported that the protection order helped stop further abuse. Similarly, Ptacek (1999) interviewed 40 women in two different courts who were seeking protection orders. 86% of the women reported that the abuse either stopped or was reduced as a result of the order. Another study of 210 women who obtained protection orders reported a 66% decrease in police contact when compared to reports of physical assaults two years prior compared to two years after the protection order was obtained (Carlson, et al., 1999).

In a descriptive longitudinal study, Gist et al. (2001) compared 180 women who were victims of intimate partner violence; 90 of whom applied for a protection order and

90 of whom were pursuing assault charges. Measures of the type, frequency and severity of violence occurred at an initial interview, one month and six months and for women seeking a protection order. A final measure was also taken at one year and for women seeking charges, two years after the initial visit. Standardized measures used included *Severity of Violence Against Women Scale (SVAWS), Stalking Victimization Survey (SVS), Danger Assessment Scale (DAS).* The results indicated that both groups of women reported lower levels of intimate partner violence for up to two years after seeking assistance. However, those women who qualified for but did not receive a protection order reported significantly more threats of abuse and physical assault at six months compared to those who received a protection order.

3.1 Enforcing Protection Orders

In a Canadian study, Rigakos (1997) examined the enforcement practices of police officers when responding to breaches of civil restraining orders and peace bonds. Questionnaires were administered to 45 police officers from British Columbia and focused on how they have reacted to peace bonds and restraining orders in the past; factors that encourage or discourage them to arrest for breaches of these protective orders; and their general perceptions of the effectiveness of protective court orders. An arrest ensued in only 21% of the breaches of a civil restraining order (n = 19) and 35% of breached peace bonds (n = 29).

The civil restraining orders were less likely to be enforced than criminal court orders; however, both orders rarely resulted in arrests when breached. More officers recommended that women obtain a civil restraining order (62%) than a peace bond (53%), which may be reflective of the view that domestic violence is a private and civil family matter. The most significant factor for not arresting for either peace bonds or restraining order breaches is when police believe that the claimant originally allowed the offender into the residence. Cases in which arrests occurred for breaches of protective court orders involved signs of forced entry, the abuser was a potentially violent offender, or signs of a struggle (a woman's plea to act ranked 6th out of the 12 situational variables inciting the police to enforce the order). Further, the police were less inclined to arrest if they believed that the victim was intoxicated or unlikely to appear in court. This discretion in addressing breached civil orders suggests that the police do not fully understand the dynamics of domestic violence and that women continue to be blamed for their abusive partner's actions. Thus abusive partner are not held accountable for domestic abuse related crimes unless there are other criminal code violations.

Johnson et al.'s (2003) study of orders of protection examined the effectiveness and the nature of the police response to reported violations. Twenty-one of 37 respondents (57%) expressed negative comments about how the police responded suggesting, for example, that the police believe that claimants use the orders to harass former partners. The researchers concluded that even with enhanced criminal justice response to domestic violence, major issues with enforcing the orders in a fair and consistent manner continue.

3.2 Empowering the Victims of Domestic Violence

Research on orders of protection by Fischer (1992), Kinports and Fischer (1993), and Fischer and Rose (1995) emphasize how orders may empower domestic violence victims regardless of whether the abuse or violence re-occurs. These authors suggest that earlier research understood "effectiveness" in a narrow way and measured by subsequent violations of the order and that the victim may feel empowered by having just obtaining the order in the first place.

Even though about 50% of women drop their orders (Kinports & Fischer, 1993), they often feel very satisfied and that the order accomplished its intended purpose (Fischer, 1992; Fischer & Rose, 1995). Women who chose to publicize their experiences of abuse used the protection order process to let the abusers know that their actions are inappropriate. It also alerts the criminal authorities to their behavior, which provides woman with a sense of power. The reasons that women gave for dropping the orders included that:

The order had given them what they needed. If one assumes that what is needed in these relationships is not only cessation of violence, but also that the women have some measure of control, then it makes some sense that an order might fill this need, without resulting in a permanent court-ordered separation between the woman and the abuser" (Fischer & Rose, 1995, p. 427). These finding must be interpreted cautiously since the women were interviewed about their experiences in the waiting room prior to receiving their orders.

Johnson et al.'s (2003) Arizona study of protection orders interviewed officials and judges, surveyed domestic violence victims by mail and interviewed those who obtained court orders. In cases that reported violations of the order (47), 22 (48%) of the 46 considered the order of protection as effective, which included 15 relationships in which subsequent violence occurred. In contrast, in five (17%) cases with no subsequent violations reported, the respondent perceived the protection order as ineffective. This suggests that domestic violence victims have a more complex understanding and understanding of an order's effectiveness, and may see an order as effective or ineffective irrespective of subsequent violations of the order or violence.

The authors suggest that in light of the above responses, it is important to keep in mind victims have different time frames when evaluating violent episodes and also see the violence within a context that is outside of research parameters. As well, the women victims in the study judged the protection orders as successful as it was allowing them to develop a paper trail which could be used to build a case and document the abuse.

Keilitz, Hannaford and Efkeman, (1997, 1998) investigated how various factors such as the court intake process, the level of assistance to petitioners, the extent of abuse and the criminal history of the respondent affect the civil protection orders in improving the quality of women's lives and of deterring abusive behaviour. Interviews were conducted with 285 women petitioners in Denver, Delaware and Washington DC a month after they received a protection order. Follow-up interviews occurred with 177 of these women about six months later. In the majority of cases, victims believed that the civil protection orders protected them against repeated incidents of physical and psychological abuse and were valuable in helping them regain a sense of well-being.

Overall, 85% of the women in the follow up interviews reported that their lives had improved, 90% felt better about themselves and 80% felt safer. Seventy two per cent of the initial participants and 65% in the follow up interviews reported no further violence. In both the initial and follow up groups, 95% indicated they would apply for a protection order again. A protection order alone, however, was not as likely to be effective against abusers with a history of violent offences; women in these cases were more likely to report a greater number of problems with violations of the protection order. The study reported a strong association between the severity and duration of abuse in that the longer women experience abuse, the more intense the behaviour is likely to become and the more likely women are to be severely injured by their abusers.

In summary, the research review suggests that protection/prevention orders are effective in dealing with woman abuse in a number of circumstances. However the extent to which the police do not follow-up with breaches of the orders remains concerning.

4.0 The Legal Analysis of *PAFVA*

The chapter provides a legal analysis of the PAFVA legislation and considers it in context with other Canadian legislation, on particular, the Saskatchewan and Manitoba acts. Based on the legal analysis a number of recommendations are documented for consideration. These recommendation are reiterated in the final chapter, further taking into consideration the results from the court file data analysis and the interviews with key justice and community stakeholders.

4.1 The *PAFVA* Legislation and its Interpretation by the Courts

Overall, the *PAFVA* has been subject to very little judicial scrutiny.[4] As of December 31, 2004, fourteen reported cases cite the *PAFVA*, [5] but the legislation is directly considered in only eight of the cases. Those cases will be discussed in the following analysis where they are relevant to the issue under consideration.

The *PAFVA* applies to "family violence", which is defined in section 1(e) to include:

- any intentional or reckless act or omission that causes injury or property damage, the purpose of which is to intimidate or harm a family member;
- any act or threatened act that causes a reasonable fear of injury or property damage, the purpose of which is to intimidate or harm a family member,
- forced confinement, and
- sexual abuse (defined as "sexual contact of any kind that is coerced by force or threat of force" (s. 1(k)).

The *PAFVA* further provides that "family violence" does not include discipline by a parent or person standing in the place of a parent of their child "if the force does not exceed what is reasonable under the circumstances" (s. 1(e)).[6] Alberta's legislation is unique in this respect, but the courts have not considered this aspect of the legislation in any reported decisions.

With the exception of the exclusion of parental discipline, the *PAFVA's* definition of family violence is very similar to the definition of "domestic violence" in Saskatchewan's *Victims of Domestic Violence Act*. Like Saskatchewan, Alberta chose not to explicitly include emotional abuse, financial abuse or harassment in its legislation, despite the recommendations of the Alberta Law Reform Institute and respondents to the

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[4] The following sources were used: Quicklaw, eCarswell, and the Canadian Statute Citator.

[5] The 14 cases are (all citations to QL): *Dumlao v. Simon*, [2000] A.J. No. 548 (Q.B.); *P.M.M. v. R.W.M.*, [2000] A.J. No. 1397 (Q.B.); *L.M.B. v. I.J.B.*, [2000] A.J. No. 1553 (Q.B.); *R. v. Creamer*, [2001] A.J. No. 1281 (P.C.); *Bodner v. Alberta*, [2001] A.J. No. 1033 (Q.B.), upheld [2002] A.J. No. 1428 (C.A.); *N.M.R. v. R.D.S.*, [2002] A.J. No. 309 (QB); *H.H. v. H.C.*, [2002] A.J. No. 534 (Q.B.); *L.N. v. D.L.*, [2002] A.J. No. 1279 (Q.B.); *D.K.P. v. P.J.D.*, [2003] A.J. No. 1380 (Q.B.); *Wegener v. Wegener*, [2003] A.J. No. 1469 (Q.B.); *M.J.M. v. A.D.*, [2004] A.J. No. 680 (Q.B.); *Minae v. Brae Centre Ltd.*, [2004] A.J. No. 943 (Q.B.); *A.P. v. E.K.*, [2004] A.J. No. 998 (Q.B.); *T.L.O. v. K.J.S.*, [2004] A.J. No. 1040 (Q.B.).

[6] This section is in line with section 43 of the *Criminal Code*, R.S.C. 1985, c. C-46, which provides that parents and persons standing in the place of parents are justified in using reasonable force to correct their children. This section was recently upheld by the Supreme Court of Canada in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76.

Consultation Report that these forms of abuse should be covered. According to the *Consultation Report*, emotional and financial abuse were excluded from the *PAFVA* because it was believed that both forms of abuse could be addressed by the courts under existing law (at 5). However, it is difficult to see how the remedies discussed above could apply in these situations. Perhaps the more compelling reason was that the consultations were said to reveal that there was not sufficient support from Albertans to warrant the inclusion of emotional and financial abuse under the *PAFVA*. Other jurisdictions do include emotional, psychological and financial abuse and harassment in their definitions of domestic violence.[7]

Emotional and financial abuse and harassment can have serious consequences for victims, and may lead to physical abuse in some cases. It is recommended that these forms of abuse be included in the definition of family violence in the *PAFVA*. While the availability of an EPO will still depend upon the existence of the need for immediate protection in such cases, an emergency might exist in the case of such abuse. The *PAFVA* allows the granting of an EPO only where "family violence" as defined by the *PAFVA* has occurred, and thus currently precludes EPOs for emotional and psychological abuse and harassment, even where these give rise to an urgent need for immediate protection.

Recommendation: *PAFVA* should be amended to include emotional abuse, financial abuse and harassment in the definition of family violence (s. 1(e)).

Another aspect of Alberta's definition of family violence which is narrower than that in other jurisdictions is the intent requirement. In order to meet the definition, the respondent must act (or fail to act) with the *purpose of intimidating or harming a family member* (see s. 1(e) of the *PAFVA*). While s. 1(e) also includes reckless acts or omissions causing injury, property damage, or reasonable fear of either of these harms, this seems inconsistent with the purpose requirement in the same section. Again, given that the occurrence of "family violence" is a precondition to granting an EPO, this purpose requirement may act to narrow the circumstances in which judges feel empowered to grant EPOs, even in cases of emergency. Given the inconsistency with the inclusion of reckless behaviour in s. 1(e) of the *PAFVA*, it is recommended that the purpose requirement be deleted from the definition of family violence.

Recommendation: *PAFVA* should be amended to delete the words "the purpose of which is to intimidate or harm a family member" from the definition of family violence (s. 1(e)).

In terms of who may apply for remedies, the *PAFVA* applies to "family members." Originally, this term was defined in s. 1(d) to mean:

- a man and woman who are or have been married to one another, or who are residing or have resided together in an intimate relationship;

[7] See Manitoba's *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D93, s. 2(1) (psychological and emotional abuse) and s. 2(2) (stalking); Nova Scotia's *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 5(1)(e) (stalking); Prince Edward Island's *Victims of Family Violence Act*, R.S.P.E.I. 1988, c.V-3.2, s. 2(e) (emotional abuse) and 2(f) (deprivation of the necessities of life); Yukon's *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 1 (deprivation of the necessities of life).

- persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time;
- persons who reside together and are related to one or more persons in the household by blood, marriage or adoption;
- any children in the care and custody of the above persons; and
- persons who reside together where one of the persons has care and custody over the other pursuant to an order of the court.

The original legislation thus excluded members of same sex relationships, despite the recommendations of the ALRI, and despite opposition attempts to move an amendment to Bill 19 to include same sex relationships.

On January 31, 2003, the *PAFVA* was amended by the *Adult Interdependent Relationships Act*, such that it now applies to

> persons who are or have been married to one another, or who are or have been adult interdependent partners of one another or who are residing or have resided together in an intimate relationship (see s. 1(d)(i) of the *PAFVA*).

According to the *Adult Interdependent Relationships Act*, an "adult interdependent partner" is someone who has lived with another person in a "relationship of interdependence" for a continuous period of at least 3 years, or in a relationship of some permanence if there is a child of the relationship by birth or adoption, or the parties have entered into an adult interdependent partner agreement.

Following this amendment, the *PAFVA* now applies to same sex intimate relationships, although for some of the period covered by this report (2002 to January 30, 2003), that was not the case. With the exception of Prince Edward Island, civil protection legislation in other Canadian jurisdictions also covers same sex relationships in situations of family violence.

While the definition of "adult interdependent partner" requires a minimum period of cohabitation, the *PAFVA's* definition of "family member" seems to apply to common law and same sex couples regardless of the length of their relationship, provided they are residing or have resided together.

The requirement of cohabitation narrows the scope of the *PAFVA*. As a result, the Act does not include intimate dating relationships or situations of elder abuse where the elder does not reside with the abusive family member. As will be noted below in section 4 of this report, it appears that some applications are being brought and granted in such cases notwithstanding their exclusion from the scope of the *PAFVA*. This shows a need for the legislation to apply more broadly, a need which was supported in the interviews conducted for this report. It is recommended that the *PAFVA* should be amended to include intimate and family relationships where the parties have not resided together.

> **Recommendation: The PAFVA should be amended to include intimate and family relationships where the parties have not resided together (s. 1(d)).**

In other respects, Alberta's legislation is broader than that in other jurisdictions, as it includes persons who reside together where one of the persons has care and custody

over the other pursuant to an order of the court. This aspect of the *PAFVA* has not been considered in any reported cases.

In *Dumlao v. Simon*, [2000] A.J. 548 (Q.B.), the Alberta Court of Queen's Bench considered the definitions of "family member" and "family violence" in the *PAFVA*. Interpreting "family member", the Court noted that the *PAFVA* did not define "intimate relationship", nor did it establish a minimum period of cohabitation for common law partners. As the parties had lived together in a "sexual relationship" for 15 months, the Court found that they were "family members." Turning to the definition of "family violence", the Court found that while "the evidence [was] consistent with a physical fight in which both may have participated", the claimant, Ms. Dumlao, was physically injured during the altercation, and was thus the subject of family violence (at para. 21).

There are no other reported cases dealing with these definitions under the *PAFVA*.

4.2 Remedies under *PAFVA*

The *PAFVA* provides three kinds of remedies: emergency protection orders, Queen's Bench protection orders, and warrants permitting entry.

4.2.1 Emergency Protection Orders

Under s. 2(1) of the *PAFVA*, emergency protection orders (EPOs) may be granted on an *ex parte* basis by provincial court judges and justices of the peace where:

- family violence has occurred, and
- the claimant requires immediate protection by reason of seriousness or urgency.
- Before making an EPO, the judge must consider the following factors (s. 2(2)):
- the nature of the family violence;
- the history of the family violence between the parties;
- the existence of immediate danger to persons or property; and
- the best interests of the claimant and her child(ren).

Pursuant to s. 2(3), EPOs may contain the following conditions with respect to the respondent's conduct:

- no attendance at the claimant or other family member's residence, property, business, school, or place of work;
- no communication or contact with the claimant or other persons;
- exclusive occupation of the family residence to the claimant and others;
- removal of the respondent from the residence;
- accompaniment of a specified person to the residence by a peace officer to supervise the removal of personal belongings; and
- seizure and storage of weapons.

An EPO may also provide exclusive occupation of the residence for the claimant, regardless of ownership.

EPOs must be reviewed by the Court of Queen's Bench within seven working days after the order is granted, with notice to the respondent. The Court may either revoke or confirm the order, and if the order is revoked, may replace it with a Queen's Bench Protection Order (s. 3).

Section 3(2) of the *PAFVA* requires that EPOs be reviewed on the basis of "affidavit evidence and any other sworn evidence." In practical terms, this means that the claimant must appear, or have counsel appear, at the Q.B. confirmation hearing. Procedures in other jurisdictions are less onerous. For example, in Manitoba, protection orders are confirmed unless challenged by the respondent. In Saskatchewan, the Court of Queen's Bench conducts a paper review, and will only order a hearing where s/he is not satisfied that there was evidence to support the original order. The more onerous review procedures in Alberta may be another factor in the low utilization rate for EPOs in some parts of the province.

> **Recommendation: The *PAFVA* should be amended to allow for a paper review of EPOs by the Court of Queen's Bench, unless the Court is not satisfied that the evidence supports the original order.**

There is only one reported decision interpreting the circumstances in which EPOs should be granted. In the case of *T.K.O. v. K.J.S.*, [2004] A.J. No. 1040 (Q.B.), Justice Lee of the Alberta Court of Queen's Bench considered whether to confirm an EPO granted by the provincial court to a woman against her husband. There was said to be conflicting affidavit evidence in terms of the need for a continuing protection order. However, there was uncontroverted evidence that the respondent had breached the EPO dozens of times by calling the claimant at her residence, that he had previously been convicted of assaulting her, and that the claimant had called the police several times before she applied for an EPO. The Court held as follows:

> The fact that the police, who are professionally and statutory [sic] charged with the responsibility to protect the Claimant from immediate danger, did not act in this case is an important factor in this matter… Presumably the Edmonton City Police would have laid criminal charges against, and/or would have arrested, the Respondent had the Claimant's allegations herein been validated. … Presumably even if the Edmonton City Police were not satisfied that any criminal charges should be laid or arrests made, they would have applied for an Emergency Protection Order on behalf of the Claimant… The failure then of the police to act in any manner is an indication that even on the civil standard, this extraordinary remedy should not be granted (at paras. 37 – 40).

In the end, the Court granted "mutual restraining orders", but did not confirm the EPO.

This decision arguably takes too narrow a view of the circumstances in which it is appropriate to grant or confirm an EPO. By considering the failure of the police to act in this case, the Court seems to confine EPOs to situations where criminal charges could be laid. The intent of the *PAFVA* was to fill gaps in currently existing remedies, not to create

an "extraordinary" remedy that is available in a narrow range of circumstances. It is also unclear why the Court granted restraining orders rather than QBPOs, as it was entitled to do under s. 3(4)(d) of the *PAFVA*. It is apparent that judicial education on the proper application of the *PAFVA* may be required.

This decision is consistent with the remarks of stakeholders that a definition of "emergency" would assist the interpretation of the *PAFVA*. For example, the *PAFVA* might be amended to include a provision that certain circumstances do not negate the need for an emergency protection order, including the fact that the respondent has been detained pursuant to criminal charges, or conversely, has not been criminally charged, or the fact that the claimant is in an emergency shelter.

Recommendation: The *PAFVA* should be amended to provide examples of circumstances that would not preclude the granting of an order.

The review procedure would also be improved by making it clear in the legislation that the respondent's compliance with an EPO does not preclude the need for the continuation of a protection order. A similar amendment to Manitoba's legislation is forthcoming.

Recommendation: The *PAFVA* should be amended to provide that "the respondent's compliance with a protection order does not by itself mean that the claimant does not have a continuing need for protection."

4.2.2 Queen's Bench Protection Orders

Queen's Bench Protection Orders (QBPOs) may be granted where the Court finds "that the claimant has been the subject of family violence" (s. 4(1)). Unlike emergency protection orders, there is no requirement of urgency for a QBPO to be granted in the first instance.

However, in *N.M.R. v. R.D.S.*, [2002] A.J. 309 (Q.B.), Justice Veit of the Court of Queen's Bench held that a QBPO may be granted *ex parte* only where the court is satisfied that it meets the criteria for *ex parte* applications under the Alberta Rules of Court – i.e. where the delay might entail serious mischief. Further, Justice Veit suggested that the forms used for QBPO applications be modified to require that self-represented litigants include information about any other family law proceedings that have been commenced, whether there are lawyers of record in those proceedings, and why they should be permitted to proceed on an *ex parte* basis. Because this information was not disclosed in the case, and the respondent sustained extraordinary costs, the Court ruled that each party should bear its own costs of the review application, even though the order was upheld on review.[8]

This case is also interesting because the Court made the protection order mutual at the review stage. Initially, the protection order had been granted against the respondent

[8] See also *Wegener v. Wegener*, [2003] A.J. No. 1469 (Q.B.), where the court ordered that the claimant must pay the costs of the respondent's agent related to a continuation application that did not proceed, without notice from the claimant.

husband only. Evidence at the second *QB* hearing was to the effect that the claimant wife had assaulted her husband during an access exchange. The Court held that while the wife's alleged assault was not reason to strike the protection order originally made, this evidence was sufficient to make the order mutual.

QBPOs may have the same conditions as EPOS restraining the conduct of the respondent and removing him from the residence. In addition, the following conditions may be included in a QBPO in relation to the respondent (s. 4(2)):

- restraint from subjecting the claimant to family violence;
- reimbursement of the claimant for monetary losses suffered by herself or her children 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 the *PAFVA* application;
- restraint 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", either directly or indirectly, with the claimant and other family members or their employers, employees, co-workers or other specified persons;
- the posting of any bond "that the Crown considers appropriate for securing the respondent's compliance with the terms of the order".

The following conditions may be made in a QBPO with respect to either party (s. 4(2)):

- temporary possession of personal property such as vehicles, cheque-books, bank cards, children's clothing, medical insurance cards, identification documents, keys or "other necessary personal effects";
- restraint from "taking, converting, damaging or otherwise dealing with property that the other party may have an interest in";
- requirement that they receive counselling (includes other family members as well).

The last condition is unique to Alberta in providing that not only respondents, but also claimants and other family members may be ordered to undergo counselling. In other jurisdictions, where counselling is provided as a potential condition, it may only be ordered in relation to the respondent.[9] The ALRI recommended against mandatory counselling for the respondent, but at the same time, did not recommend that the claimant and other family members should be subject to orders requiring them to obtain counseling. This provision in the *PAFVA* was added following the government's consultations, in place of the proposed condition allowing mandatory counselling for the respondent.

[9] See Manitoba legislation, s. 14(1)(m); Saskatchewan legislation, s. 7(1)(i); Yukon legislation, s. 7(1)(i).

The power to order the claimant and other family members to obtain counselling is problematic, as it suggests that the claimant bears some responsibility for the abuse. While claimants may benefit from counselling following an incident of family violence, the decision to obtain such counseling should be their own. Section 4(2)(k) of the *PAFVA* may re-victimize claimants, and should be amended to provide that only the respondent can be ordered to receive counselling. This suggestion is supported by several of the interviews conducted for this review.

Recommendation: The *PAFVA* should be amended to provide that only respondents can be ordered to receive counselling as a condition of protection orders (s. 4(2)(k)).

In the *Dumlao v. Simon* case, the Court of Queen's Bench considered a claim for interim support and a lump sum payment of $2000 for moving, accommodation, medical and dental expenses by the claimant common law spouse. As noted above, the Court determined that Ms. Dumlao was the subject of family violence as defined by the *Act*. Moreover, as a "family member", she was found to be entitled to claim reimbursement for her expenses under s. 4 of the *PAFVA*. The Court noted that there was no definition of "reimburse" in the Act, and interpreted this term to mean that the respondent had to "repay" expenditures that had been made by the claimant. Because there was no evidence of actual expenditures put forward by the claimant, the Court rejected this claim.

In terms of her claim for support, the Court noted that, as the parties were unmarried, and had cohabited for less than 3 years, support would not be available under either the *Divorce Act* or *Domestic Relations Act*. In the Court's view, the intent behind the *PAFVA* was not to provide ongoing support in situations where the parties were excluded from these other Acts, as this "would be to circumvent" their provisions. Instead, it was found that the *PAFVA* was intended to provide orders for support or loss of income "arising directly from the violence" (at para. 35). In light of evidence that Ms. Dumlao had been unable to earn income from her business for one month while she recovered from her injuries at the hands of the respondent, the Court awarded her compensation for the loss of income for this period, in the amount of $900.50.

It is unclear from the wording of the *PAFVA* whether the legislature intended the power to order spousal support to be interpreted as narrowly as it was in the *Dumlao* case. While section 4(2)(d) of the *PAFVA* provides for a fairly narrow scope of compensation orders, section 4(2) also allows a Court to make any other provision that it considers appropriate. In its final report, the ALRI recommended that "[I]t should be possible to make an order that the respondent pay to the claimant financial relief made necessary by the abuse and resulting separation" (at 75). This was to cover the "sudden withdrawal of support" that may occur as a result of no-contact orders under *PAFVA*.

There is nothing in the government's *Consultation Report* to suggest that a narrow power to order support was intended. However, the anticipated proclamation of the *Family Law Act* will allow spousal support orders to be made without a minimum period of cohabitation. This should preclude the narrow interpretation of the jurisdiction to award support in future applications under the *PAFVA*.

4.2.3 Process for Making Applications for EPOs and QBPOs

Applications for EPOs and QBPOs may be made by the following persons (s. 6):

- persons claiming to have been subjected to family violence,
- any other person acting on behalf of the alleged victim, with leave of the judge,
- persons designated by the regulations (peace officers and persons acting on behalf of an agency authorized by the Minister of Children's Services to apply for emergency protection orders), with the consent of the alleged victim.

Applications for EPOs must be made in person by the claimant or person acting on her behalf, however peace officers and persons acting on behalf of the agencies noted above may make such applications by telecommunication as well (see s. 4 of the *PAFVA* Regulations). Applications for QBPOs must be made in person (s. 6(2) *PAFVA*). In Edmonton, a Protection Order Program in place to assist claimants with their applications opened in September of 2004, just beyond the end of the data collection for this review. Family Law Information Centres are also available in Calgary and Edmonton.

Applications for EPOs may be made before a designated justice of the peace, or a provincial court judge (s. 2(1)). Justices of the peace are available by telecommunication 24 hours a day out of Edmonton, and in person in Calgary and Edmonton 16 hours a day (8:00 a.m. to midnight). The effect of this is that for claimants living outside of Calgary and Edmonton, after-hours applications must be made by the police or other persons designated by the regulations, as only they are able to apply by telecommunication. Between midnight and 8:00 a.m., all claimants living outside of Edmonton are in the same position.

This may create problems with the accessibility of EPOs, particularly for claimants who do not wish to rely on the police, or who seek but are denied police assistance. While it seems to have been envisioned that most applications for EPOs would be made by peace officers, the data collected for this report suggest that the police do not always bring applications on behalf of claimants who request their assistance. This may be because of a lack of knowledge about the *PAFVA* and the circumstances in which it applies.

Some other jurisdictions, notably Nova Scotia, P.E.I. and the Yukon, allow applications to be made by telecommunication by claimants themselves.[10] Manitoba permits applications by telecommunication by counsel on behalf of claimants,[11] and Saskatchewan provides for applications by telecommunication by designated persons, including victim assistance and crisis workers.[12] Other jurisdictions also a broader range

[10] See Nova Scotia's *Domestic Violence Intervention Regulations*, N.S. Reg. 75/2003, s. 4; P.E.I.'s legislation, s. 4(7); Yukon's legislation, s. 2(3).
[11] See Manitoba legislation, s. 4(2).
[12] See Saskatchewan's *Victims of Domestic Violence Regulations*, c. V-6.02 Reg. 1, ss. 3, 4(2). Other jurisdictions also a broader range of persons to make applications on behalf of victims of family violence.

of persons to make applications on behalf of victims of family violence.[13] Either approach would better guarantee accessibility for claimants in Alberta.

Recommendation: The PAFVA Regulations should be amended to provide that applications for EPOs can be made by the claimant, counsel, or shelter workers and victim assistance workers by telecommunication.

EPOs and QBPOs are not effective until the respondent has actual notice of the protection order and its conditions. Service of the order on the respondent must be made in accordance with the regulations (for EPOs) or the Alberta Rules of Court (for QBPOs). EPOs must be served by a peace officer or other person ordered to do so by the judge granting the order (s. 7, *PAFVA Regulations*).

Substitutional service is available for EPOs under the *PAFVA Regulation* (section 8), and for QBPOs under the *Alberta Rules of Court* (section 23). However, in *D.K.P. v. P.J.D.*, [2003] A.J. No. 1380 (Q.B.), Bielby, J. of the Alberta Court of Queen's Bench noted that substitutional service "may be a trap for the unwary", given the requirement for actual notice of the order. Justice Bielby suggested that claimants obtain a declaration that the respondent has had actual notice of the EPO or QBPO, so that this issue is settled if the respondent breaches the order. In the circumstances of that case, it was found to be sufficient that a police officer had advised the respondent of the terms of the order by cellular telephone.

Protection orders must be made for a specified period of time, not to exceed one year unless extended by the Court of Queen's Bench (s. 7).

4.2.4 Warrants Permitting Entry

The third type of remedy provided under the *PAFVA* is a warrant permitting entry. The warrant may be issued upon the application of peace officer, without notice to the respondent, where there are reasonable and probable grounds to believe that a family member may have been the subject of family violence, will be found at the place to be searched, and the person who provided the information on oath has been refused access to that family member (*PAFVA*, s. 10). The application may be made in person or by telecommunication. If granted, the warrant permits the person named therein to:

- enter the place named in the warrant and any other structure or building used in connection with the place,
- search for, assist or examine the family member, and
- with the person's consent, to remove him or her from the premises for the purpose of assisting or examining them.

This remedial aspect of the *PAFVA* has not been considered in any reported cases.

[13] See for example Nova Scotia's regulations (s. 3), which allow applications by victim services officers and transition house workers.

4.2.5 Prohibitions

The *PAFVA* provides in section 13 that "no person shall, with malicious intent, make a frivolous or vexatious complaint under this Act." This provision was based on a recommendation in the ALRI report, which was in turn based on comments received on the earlier discussion report that the legislation would be open to abuse. Similar comments were made in response to the government's *Consultation Report*, although by a "small number" of respondents. The Saskatchewan and Manitoba Acts do not contain similar provisions, although other jurisdictions do.[14] There are no reported cases dealing with this section of the *PAFVA*.

It is questionable whether this section of the *PAFVA* is necessary. Persons making false complaints under the *PAFVA* could be charged under the *Criminal Code* for obstruction of justice (s. 139) or public mischief (s. 140). While only one key stakeholder raised this in the interviews, it is not unreasonable to assume that the existence of such a section in the *PAFVA* may deter victims of family abuse from making valid complaints under the *Act* for fear that their complaints might be construed as frivolous or vexatious.

Recommendation: The *PAFVA* should be amended to delete the reference to frivolous or vexatious complaints (s. 13).

The *PAFVA* is silent on what transpires where the respondent breaches a protection order made under the Act. The ALRI recommended that breaches of the *PAFVA* be prosecuted under s. 127 of the *Criminal Code*, which provides as follows:

> s. 127 Everyone who, without lawful excuse, disobeys a lawful order made by a court of justice ... is, *unless a punishment or other mode of proceeding is expressly provided by law*, guilty of an indictable offence and liable to imprisonment for a term not exceeding two years (emphasis added).

The rationale behind this recommendation was that if the *PAFVA* contained its own offence provisions that would preclude the application of s. 127. Legislation in some other jurisdictions is also silent on the question of breach, presumably on the same basis.

In *R. v. Creamer*, [2001] A.J. 1281 (P.C.), the Alberta Provincial Court was faced with two charges under s. 127 in relation to a woman who was alleged to have violated an *ex parte* restraining order made by the Court of Queen's Bench. Counsel for the accused argued that the existence of remedies under the *PAFVA* amounted to another "mode of proceeding expressly provided by law", such that she should not be convicted under s. 127 of the *Criminal Code*. The court rejected this argument on the basis that the restraining order in question was not obtained under the *PAFVA*.

However, the fact that the accused could be found in civil contempt of the restraining order under the Alberta Rules of Court was found to constitute "another mode of proceeding", and the accused was accordingly acquitted. This analysis supports the exclusion of an enforcement provision from the *PAFVA* and other civil legislation if the government's intent was not to preclude criminal proceedings.

[14] See Nova Scotia legislation, s. 18(b); PEI legislation, s. 16. Yukon's legislation creates an offence for "knowingly mak[ing] a false statement in an application or a hearing" under the Act (s. 16), although this could apply to respondents as well as claimants.

Without creating separate offences for breach of protection orders, legislation in some other jurisdictions does provide powers of arrest for police when respondents are in breach (see Nova Scotia legislation, s. 19; P.E.I. legislation, s. 17; Yukon legislation, s. 9). While this power is typically included on protection orders themselves in Alberta, it would be useful to clarify police powers under the *PAFVA* as well.

> **Recommendation: The *PAFVA* should be amended to provide that the police have the authority to arrest respondents without warrant where there are reasonable and probable grounds to believe they violated the terms of a protection order under the Act.**

4.3 Does the *PAFVA* Violate the Constitution?

There have been no constitutional challenges with respect to the *PAFVA* to date. Manitoba's civil legislation, the *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, was recently subjected to such a challenge. In *Baril v. Obelnicki*, 2004 MBQB 92, Scurfield, J. of the Manitoba Court of Queen's Bench struck down portions of that Act as unconstitutional. The Act was found to be within Manitoba's powers and not an unconstitutional incursion into federal jurisdiction over criminal law. Moreover, the Act was found to be constitutional in terms of its conferral of powers on justices of the peace. However, the Act was found to violate the *Canadian Charter of Rights and Freedoms* ("the *Charter*"). More specifically, it was held that the Act violated respondents' freedom of expression by allowing for non-communication orders and their liberty rights by restricting the places that they may lawfully attend.

The government could not justify these violations under the principles of fundamental justice or under s. 1 of the *Charter*, as the review process for *ex parte* orders was found to be unfair. This was because under the Manitoba Act, the onus is on the respondent to overturn the order, and because the order otherwise applies for an indefinite period of time. The court was also troubled by the fact that the complainant need not call new evidence during the review process, and there was no explicit right to challenge her evidence via cross-examination. Consequently, the court struck down those sections of the Act dealing with the onus and evidentiary requirements at the review hearing. Justice Scurfield also held that the complainant's belief in the threat of stalking or domestic violence under s. 6 of the Act must be interpreted as requiring a "reasonable" belief.

The Manitoba government has filed an appeal in this case. In the meantime, the Director of the Family Law Branch of Manitoba Justice issued a release noting the changes in the legislation, and the changes to the processes required as a result.

In an earlier case, *A.L.G.C. v. Prince Edward Island,* [1998] P.E.I.J. No. 15, the Prince Edward Island Supreme Court (Trial Division) held that s. 6 of P.E.I.'s *Victims of Family Violence Act* violated s. 7 of the *Charter*. This was based on the finding that the respondent did not have an adequate opportunity to be heard during the review of the emergency protection order by the Supreme Court.[15]

[15] The Court rejected several other grounds challenging PEI's Act relating to the division of powers, the powers of justices of the peace, and the definition of family violence. On the latter point, it was held that

While these decisions are not binding in Alberta, they do point to the bases upon which a similar constitutional challenge could be mounted in this province – i.e. on the grounds that the *PAFVA* violates the freedom of expression and liberty rights of respondents by providing for no communication and no contact orders. However, the procedural unfairness noted in *Baril v. Oblenicki* and *A.L.G.C. v. Prince Edward Island* is not present in the Alberta legislation. Under *PAFVA*, a confirmation hearing is automatically held, without application by the respondent; there is no reverse onus on the respondent during the confirmation hearing; and such a hearing "must be based on affidavit evidence and any other sworn evidence" (s. 3(2)). Even if our recommendation for paper review at the Court of Queen's Bench is accepted, the judge would still have the power to order a hearing where the evidence was insufficient to confirm the order, allowing the respondent an opportunity to be heard.

In at least one case under the *PAFVA*, a reviewing court has ordered a hearing on the basis that the affidavit evidence was conflicting, and needed to be tested in court.[16] It is left to the judge's discretion whether to consider the evidence from the EPO hearing (s. 3(3)) as well. These differences between the Acts suggest that any constitutional challenge to the *PAFVA* may fail on the basis that its procedures do allow for a fair hearing from the perspective of the respondent. Further, the *PAFVA* requires reasonable grounds for bringing a complaint based on fear of injury or property damage, rather than a subjective belief (see s. 1(e)(ii)). Again, this requirement offers a level of protection to respondents that is lacking in some other Acts.

4.4 Does *PAFVA* Apply to those Living on First Nations Reserves?

This question relates to the federal immunity doctrine, and s. 88 of the *Indian Act*, R.S.C. 1985, c. I-5, which allows provincial laws of general application to apply to First Nations unless the laws are inconsistent with the *Indian Act*, or apply to matters dealt with under the *Indian Act.* Section 89 of the *Indian Act* provides that "the real and personal property of an Indian or a Band situated on a Reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a Band." The section does not apply to leasehold interests.

There have been no cases dealing with the issue of whether the *PAFVA* applies on First Nations reserves in Alberta, and no cases dealing with this issue under civil legislation in other jurisdictions. Cases dealing with similar fact patterns suggest that some aspects of the *PAFVA* will apply on First Nations reserves, while others will not.

In *Derrickson* v. *Derrickson*, [1986] 1 S.C.R. 285, and *Paul* v. *Paul*, [1986] 1 S.C.R. 306, the Supreme Court of Canada held that provincial family law legislation was inapplicable to the division of matrimonial property on First Nations reserves, and to the interim occupancy of a family residence on reserve land. This is because the federal government has exclusive authority over reserve lands under s. 91(24) of the *Constitution*

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the inclusion of emotional abuse in the definition of family violence did not render the Act overbroad (at para. 12).

[16] See M.J.M. v. A.D., [2004] A.J. No. 680 (Q.B.).

Act, 1867. The Court held that this exclusive jurisdiction extends to ownership and possession of "immovable property" located on reserve lands.

In contrast, in *Dunstan* v. *Dunstan*, [2002] B.C.J. No. 443 (S.C.), an order restraining the disposal of family assets located on a reserve was found to be valid in part. The assets in question included cattle, horses, and interest in a ranch. With respect to the animals, the court found that a restraining order was not a "charge, pledge or mortgage" against real or personal property, as contemplated by s. 89 of the *Indian Act*. Further, the action was not instigated by "any person other than an Indian", but by Dunstan's wife, a member of the Lytton First Nation. Although the ranch was found to be a leasehold interest, and thus excluded from the application of s. 89, the court still declined to grant the restraining order in respect of it, as this conflicted with the federal government's authority under s. 91(24).

In a number of decisions, enforcement mechanisms for child and spousal support orders were found to be applicable against First Nations persons living on reserves. See *Re Baptiste* (1979), 102 D.L.R. (3d) 553 (Alta Q.B.); *Bellegarde v. Walker* (1987), 36 D.L.R. (4th) 700 (Sask. Q.B.); *Director of Maintenance and Recovery v. Snow*, [1983] 3 C.N.L.R. 65 (Alta P.C.); *Ontario v. Nowegejick*, [1989] 2 C.N.L.R. 27 (Ont. P.C.).

These cases suggest that the provisions of the *PAFVA* allowing for exclusive occupation of the family residence will not apply on First Nations reserves (see s. 2(3)(c), 4(2)(c)). This inapplicability may extend to the provisions dealing with the restraint of the respondent from attending at the family residence, and with removal of the respondent from the residence (s. 2(3)(a), (d); s. 4(2)(a), (h)). However, other conditions should apply where they do not relate to the possession or occupancy of real property.

While there have been some recommendations made to alleviate the issue of the inapplicability of family legislation on First Nations reserves, none of these are measures that could be implemented at the provincial government level.[17]

[17] See Mary Ellen Turpel, "Home/Land" (1991) 10 Canadian Journal of Family Law 17. Turpel notes that as an "interim measure" pending full self government for Aboriginal peoples, band by-laws could be developed to deal with matrimonial property on reserves under the *Indian Act* (at 40). Once passed, such by-laws have the force of federal statutory instruments. Another possibility is the *First nations Land Management Act*, S.C. 1999, s. 17, which provides for First Nations land codes, including the resolution of matrimonial property issues.

5.0 The Analysis of the *PAFVA* Court Case Files

The court file review provides a comprehensive view of the nature of the circumstances leading to an application for an EPO under the *PAFVA* legislation and what transpires when the cases are reviewed in the Court of Queen's Bench. However, what cannot be gleaned from the court files are what processes led to making the application and what happened after the QBPO was granted. Questions such as whether or not the protection order was breached, the consequences for breaching and whether claimants felt safer with the protection orders in place cannot be answered by the information in these files.

Consequently we developed interview guides to speak to a wide array of stakeholders with respect to their views about the accessibility and ease of applying for EPOs, what is currently working well and what may be problematic in implementing the legislation, the adequacy of the training and whether the *PAFVA* and EPO protect current abuse and prevent abuse in future. The key stakeholders included the police and child welfare workers (currently the only professionals mandated to make applications on behalf of victims), other key community representatives such as shelter directors and Victims Assistance workers that assist both the RCMP and city police services. We also interviewed other justice and community representatives that, for example, work in agencies that provide counselling for both victims and perpetrators of domestic violence, court administrators and lawyers. Their perspectives are presented in Chapters 4 and 5.

In total, we reviewed 981 court files of *PAFVA* applications from across Alberta from 2002 until June of 2004 (half the year). Note that the total number of cases varies from analysis to analysis because there is not always information on every variable within each court file.

Table 2 summarizes the number of EPO applications in each of the locations in the province to give a general sense of the numbers from larger cities, smaller cities (75,000 population and below) and rural locations. Edmonton had the highest proportion of applications (almost half of the number documented in the research): Also of note is that while Edmonton's numbers increased yearly and Calgary's increased slightly (albeit,

Table 2: Locations and Numbers of EPO Applications from 2002 and 2003

Location	2002	2003	2004 to June 30 (estimate for full year)	Totals (980files)	Change over 3 years
Edmonton	187	207	148 (296)	542 (55.3%)	increasing
Calgary	30	58	34 (68)	122 (12.4%)	Slight increase
Lethbridge	30	19	9 (18)	58 (5.9%)	decreasing
Red Deer	10	4	1 (2)	15 (1.5%)	decreasing
Ft. McMurray	9	5	5 (10)	19 (1.92%)	Consistently low
Lloydminster	0	1	0 (0)	1 (0.1%)	Negligible use
Grande Prairie	4	2	2 (4)	8 (0.8%)	Consistently low
Small Alberta centres	26	97	92 (184)	140 (14.3%)	increasing
TOTALS	296	393	291 (582)		

much smaller proportionally), the numbers in Lethbridge, Red Deer and Ft. McMurray decreased. Across the province, the numbers of applications in the smaller centres are steadily increasing as well.

5.1 Demographic Characteristics of Claimants and Respondents

Table 3 presents the major demographic characteristics of both claimants and respondents from the file review. The majority of EPO applications were made by women, with most of the respondents being male. The applications of only 264 claimants noted age; only 294 respondents. Similarly, few of the case files specified racial background for either the claimant or the respondent.

Table 3: Demographics of Claimants and Respondents

Demographic Variable		Claimant	Respondent
Sex	Female	92.1% (902 of 981)	5.3% (52 of 981)
	Male	7.8% (76 of 981)	94.6% (925 of 981)
	Both male & female	0.1% (1 of 981)	
Age		38.4 years (range of 5 to 83 years) (N=264)	37 years (range of 15 to 77). (N=294)
Racial Background			
	Caucasian	53.4% (63 of 118)	57% (75 of 132)
	Aboriginal/ Métis	22.9% (27 of 118)	18.9% (25 of 132)
	Indo-Canadian	6.8% (8 of 118)	8.3% (11 of 132)
	Filipino/other Pacific	3.4% (4 of 118)	3.8% (5 of 132)
	Central/South American	4.2% (5 of 118)	3.0% (4 of 132)
	African Canadian	1.7% (2 of 118)	2.3% (3 of 132)
	Asian	2.5% (3 of 118)	3.0% (4 of 132)
	Other	5.1% (6 of 118)	3.8% (5 of 132)

When noted, most claimants and respondents were Caucasian, with the next most frequent racial group being Aboriginal. The majority of the applications (75.6%) had children named on them (737 applications of 975). The number of children named ranged from none to seven. The age of the oldest child (noted on 726 files) ranged from below one year of age to 49 years (average of 9.3 years; standard deviation of 5.5).

Table 4: Claimant/Respondent Relationship

Relationship Type	Number (N=968 files)	Percent
Spouses	309	31.9%
Common law partners	190	19.6%
Ex-common law Partners	154	15.9%
Ex-spouse (separated or divorced)	117	12.1%
Ex-girlfriend/boyfriend	57	5.9%
Parent/child	45	4.6%
Other	96	9.9%

With respect to the claimant/respondent relationship, as can be seen in Table 4, the highest proportion of relationships was individuals living together as spouses or

common-law partners. The next highest categories were for couples no longer together: ex-common law partners and ex-partners either legally separated or divorced. A much smaller number were ex-boyfriend/girlfriend and parent-child relationships, while the remaining kinds of relationships were noted much less frequently (all under one percent), but included boyfriend/girlfriend with or without cohabitation, siblings, and grandparents.

Of the 827 couple relationships, over half of the respondents were currently living together when the application was made (499 of 827 or 60.3%). The others in couple relationships were no-longer cohabiting (328 of 827 or 39.6%). Of the non-couple relationships, the only category of any numbers was parents (4.6% or 45 of 711).

Table 5: Length of Relationship

Length	Frequency (N=711)	Percent
Over ten years	309	43.5%
Six to ten years	127	17.9%
One to five years	231	32.5%
Less than one year	42	5.9%
No relationship (i.e. stalking)	2	0.3%

The length of these relationships varied (as seen in Table 5), being over ten years in the highest category and almost a third were from one to five years. A small number had been in the relationship for less than one year; two were listed as having no relationship, for example being stalked by a stranger.

5.2 History and Nature of Violence in the Relationship

The majority of relationships (90% or 857 of 952) reported a history of abuse; only 95 claimants (100%) noted that there had been no previous abuse in the relationship.

Table 6: Nature of Abuse in the Relationship

Nature of Abuse	Frequency (N= 960)	Percent
Physical Assault	407	42.2%
Threats to kill claimant/others protected under the order	104	10.8%
Threat of physical assault	82	8.5%
Property damage	77	8.0%
Stalking (unwanted communication)	44	4.6%
Sexual assault	38	4.0%
Stalking (watching or following)	37	3.9%
Threat to kidnap child/children	32	3.3%
Threat of self-harm (respondent threatened to kill him/herself)	18	1.9%
Other	121	12.6%

With respect to the nature of the abuse documented on 960 applications (see Table 6), the most commonly noted were physical assault; threats to kill claimant/others protected under the order; property damage and threats of physical assault. Six-hundred

and thirty-nine applications listed a second form of abuse; the most common additional forms of violence were the same but in a slightly different order: threat of physical assault (18.9%); property damage (15.8%) and threat to kill the claimant or others protected by the order (13.1%).

Regarding the 387 applications that listed the form of any physical assault (see Table 7), the most common was pushing or shoving; being punched, being slapped and being choked or strangled. In over one-third of the cases, (37.9% or 238 of 628) the physical violence involved multiple assaults.

Table 7: Form of Physical Assault

Form of Physical Assault	Frequency (N=387)	Percent
Punched	90	23.8%
Slapped	61	15.8%
Kicked	14	3.6%
Pushed or shoved	121	31.3%
Choked/strangled	37	9.6%
Beat up	38	9.8%
Other	24	6.2%

Across all applications, the victims sought medical attention in relatively few cases (13.6% or 95 of 702). Weapons were not involved in the majority (83.5% or 782 of 937). However weapons were used in 89 incidents (9.1%) and threatened in 66 incidents (7.0%). The weapons were primarily household objects (such as telephones, fry pans) (39 of 143 or 27.3%); knives (37 or 25.9%), handguns (14 or 9.8%), rifles (11 or 7.7%) and blunt objects such as hammers or bats (11 or 7.7%).

One-quarter of the claimants (25.4% or 238 of 938), had previous court orders or police orders. Of those that specified the nature of these (see Table 8), the largest category was having previously been granted an emergency protection order and a similar proportion had previously had restraining orders. Sixty-two individuals (14.7%) noted that more than one type of order was in force, all of which were concurrent.

Table 8: Previous Court Orders

Type of Order	Frequency (N=204)	Percent
Previous Emergency Protection Order	53	23.1%
Restraining Order	50	21.8%
Bail (no contact)	36	15.7%
Custody order	23	10.0%
Peace bond	23	10.0%
Officer's recognizance	11	4.8%
Queen's Bench Protection Order	10	4.4%
No contact order	7	3.1%
Other	16	7.0%

Over two-fifths of the respondents (43.5% or 369 of 849) had previous criminal records related to domestic violence or stalking. The most common prior records (see

Table 9) were domestic assault and general assault. One hundred twenty-three respondents had more than one prior record, with general assaults were most common, and followed by uttering threats.

Table 9: Respondent's Prior Criminal Record

Type of Prior Record	Frequency (N=319)	Percent
Domestic assault	149	42%
General assault	131	37%
Uttering Threats	21	5.9%
Sexual assault	15	4.2%
Unlawful confinement	10	2.8%
Breach of protection order	7	2.0%
Other	21	5.9%

5.3 The Criminal Justice Response to the Situation Related to the Application

In the majority of cases (85.7% or 813 of 949) there were no criminal matters proceeding related to the cases. As such, only fourteen percent of the claimants (131) had criminal matters in progress related to the current situation identified on the application for an emergency protection order.

Of the claimants that were aware of the types of criminal charges laid against the respondents (twenty-eight did not know), the majority were common assault/assault and uttering threats (see Table 10). Of note in the remaining cases, two respondents were charged with first degree murder, two with attempted and one with sexual assault.

Table 10: Criminal Charges Laid in Current Incident

Type of Criminal Charge	Frequency (N=113)	Percent
Common assault	54	47.8%
Uttering Threats	14	12.4%
Assault causing bodily harm	8	7.1%
Assault with a weapon	6	5.3%
Break and enter	6	5.3%
Mischief	4	3.5%
Causing disturbance	4	3.5%
Other	17	15%

Twenty-four individuals noted additional charges including common assault (6); uttering threats (7); assault with a weapon (2) and breach of recognizance (2).

On 672 applications, no charges had been laid against the respondent in the situation(s) linked to the application for an emergency protection order (see Table 11). However, in a number of cases (183 or 27.2%) it was noted that the police were never called and this is likely the case in a number of other incidents where it was simply not specified whether the police had been contacted. Notably four claimants mentioned that the police had asked that an EPO be in place before they laid charges.

Table 11: Reasons Why No Criminal Charges Were Laid against Respondent

Reasons why no charges	Frequency (N=672)	Percent
Police not called	183	27.2%
No criminal offence occurred	170	25.3%
Investigation pending	95	14.1%
Insufficient evidence	91	13.5%
Victims does not want charges laid[18]	66	9.8%
Charges will be laid	17	2.5%
Other	50	7.4%

5.4 The EPO Application and Conditions Granted

The first fact of note is that the number of applications in 2003 increased from that in 2002 and is substantially increasing again in 2004 if the figures for the first half of 2004 hold for the second half. This is almost entirely accountable for by increases in applications in the city of Edmonton.

The applications were most often made during the day (76.6% or 728 of 950) or the evening (16.9% or 161 of 950). Few (6.4% or 61) were applied for in the late evening. Of 982 EPO applications, almost three quarters were made in person (75.2% or 735 of 982), with the remainder by telecommunication (24.8% or 243 of 982). Significantly more applications made in-person were denied than those made by telephone (see Table 12) (chi-square = 15.0; p=.000; phi coefficient = .12, a small effect).

Table 12: Application Method * Status of Emergency order by JP/Provincial Court Judge

	Status of Order		
Application Method	Granted	Denied	Total
In person	587(80.1%)	146 (19.9%)	733
By telecommunication	221 (90.9%)	22 (9.1%)	243
Total	808 (82.8%	168 (17.2%	976

The applications were primarily made by the victims (71.3% or 697 of 977) or by the police (25.6% or 249 of 977). Nine lawyers for victims made applications, in addition to ten other unspecified persons on behalf of victims. Representatives from the Ministry of Children's service made three applications. A shift is noted between 2002, 2003 and the first six months of 2004 in the numbers of victims applying for themselves for protection orders, with the applications made by police decreasing (chi-square = 23.4 p<.000; phi coefficient is .15 which indicates a small size effect)

Table 13: Application made by * Year of Application

	Year of Application			
Application Made by	2002	2003	2004 (6 months)	Total
Victim	185 (62.5%)	293 (75.1%)	218 (74.9%)	696 (71.2%)
Victim's Lawyer	2 (0.7%)	3 (0.8%)	6 (2.1%)	11 (1.1%)
Police	106 (35.8%)	88 (22.6%)	62 (21.3%)	237 (26.2%)
Other	3 (1.0%)	6 (1.5%)	5 (1.7%)	14 (1.4%)
Total	296	390	291	977

[18] This may have meant that the claimant chose not to contact the police.

Further, this difference is also related to the size of the centre (see Table 14) with significantly more victims making applications in the large cities versus smaller centres (chi-square is 276; p< .000; phi coefficient is .53, which indicates a large effect).

Table 14: Application made by * Size of Centre

	Size of Centre of Application			
Application Made by	Large urban	Small urban	Towns	Total
Victim	575 (87.3%	74 (41.6%)	47 (33.8%)	696 (71.3%
Victim's Lawyer	7 (1.1%)	2 (1.1%)	2 (1.4%	11 (1.1%)
Police	67 (10.2%)	102 (57.3%)	87 (62.6%)	256 (26.2%)
Other	10 (1.5%)	0 (0%)	3 (2.2%)	13 (1.3%)
Total	659	178	139	976

The majority of the applications were for the victim and minor children (51.7% or 505 of 977), for the victims only (23.7% or 232 of 977) and for the victim (applied for by others on behalf of the victim) (17.8% or 174 of 977 applications). In 11 cases the application was for a minor only and 55 cases (5.6%) were for "others". In all cases but two (of 967 or 99.8%), the victim consented to the order.

Table 15: Status of EPO * Who Made Application

	Status of EPO Application (N=977)		
Application Made by	Granted	Denied	Total
Victim	556 (80%)	139 (20%)	695
Victim's Lawyer	10 (90.9%)	1 (9.1%)	11
Police	233 (91%)	23 (9%)	256
Other	8 (57.1%)	6 (42.9%)	14
Total	807	169	

Of the 977 applications heard by Justices of the Peace or Provincial Court judges in Alberta from 2002 until June of 2004, the majority was granted (82.7% or 807); 169 or 17.3% were denied. There was a statistically significant difference in whether the order was granted or denied based on who applied, such that victims were less likely to have the orders granted than other applicants (chi-square = 22.8; p = .000; phi coefficient is .15, which indicates a small effect).

Table 16: Victim's Sex * Status of Emergency order by JP or Provincial Court Judge

	Status of EPO Application		
Gender of Claimant	Granted	Denied	Total
Female	755 (83.8%)	146 (16.2%)	901
Male	52 (69.3%)	23 (30.7%)	75
Total	807 (82.7%)	169 (17.2%)	976

Interestingly, there was no difference in the granting of the order based on whether the respondent had a previous criminal record (chi-square = .56; p = .28).

Finally, as can be seen in Table 16, there is a significant difference in whether the order was granted based on the gender of the claimant such that male claimants were denied more often than women claimants (chi-square = 10.; p = .004; phi coefficient is .10, which indicates a small effect).

The provisions of the emergency protection orders are documented in Table 18 in conjunction with the provisions granted by the Court of Queen's Bench judge. As can be seen in this table, the most common provisions granted in the EPO were prohibiting the respondent from contacting or communicating with the victim or others named in the Order (95.7%) and from attending at or near the victim's residence (95.3%).

Only 17.3% (169) of the 978 EPO applications were denied, with the most common reason being that no immediate protection was required (in 118 cases); in 50 cases the evidence that domestic violence occurred was deemed insufficient. In four cases, the respondent was arrested on criminal charges with an undertaking for no contact, thus resulting in no immediate need for protection from the JP's/Provincial Court judge's perspective.

In another 28 cases, the application was not considered to fit within the definition of cohabitant under the Act: including, among others, six ex-boyfriends, two friends, two sister/brothers, one ex-common law partner, one parent, and one same-sex relationship. In six cases the claimant resided out of province. Of those claimants denied EPOs, 44 were directed to use peace bonds or restraining orders; 11 to pressing criminal charges.

As can be seen in Table 17, over the two and a half years of the study there was consistency with respect to the number of EPO applications being granted by JP's or Provincial Court judges (chi-square = 1.7, p = .42.

Table 17:Year of Application * Status of EPO by JP or Provincial Court Judge.

	Year of Application			
Status of Order	2002	2003	2004 (6 months)	Total
Granted	250 (84.5%)	325 (83.1%)	234 (80.4%)	809
Denied	46 (15.5%)	66 (16.9%)	57 (19.6%	169
Total	296	391	291	978

Of the EPOs granted, a small number were contested by the respondent (85 or 11.6%). In the majority (42 of 86 or 47.7%) the orders were upheld: Twenty orders were set aside (23.3%), another twenty-five (29.1%) were upheld but varied. Eight cross applications were made by respondents (1.3%), three of which were granted and five were denied.

5.5 The Court of Queen's Bench Review Process

Of those granted the initial order, 781 subsequently were reviewed by a Court of Queen's Bench judge. As can be seen in Table 18, slightly over half of the orders were granted/confirmed. Including the categories of granted, varied, revoked and a new order granted, 70.4% of the orders (558) were granted or granted in changed form.

The claimant was present at the review/hearing about half the time (51% or 308 of 606 instances). Counsel for the victim was present 59.4% of the time (432 of 727); the

respondent attended 31.8% of the time (110 of 661). Counsel for the respondent attended only 21.7% of the hearings (157 of 724). In 80% of cases (457 of 572), the respondent was served notice of the Order.

Table 18: Status of Emergency Protection Order at Completion of QB Review/Hearing

Status of Order (N=781)	**Frequency**
Granted/Confirmed	52.1% (407)
Dismissed/Revoked/Denied/Vacated	24.8% (194)
Varied	15.6% (122)
Revoked and a new order granted	3.7% (29)
Hearing/review adjourned	0.5% (4)
Order Lapsed/expired	1.2% (9)
Other	1.8% (23)

Table 19: Provisions of EPOs and QBPOs

PAFVA Order Prohibitions	**Percent granted by JP or Provincial Court (809 orders)**	**Percent Granted by QB (398 orders)**
Respondent is prohibited from following victims or others	23.4% (185 of 790)	Not applicable
Respondent is prohibited from contacting or communicating with victim or others	95.7% (774 of 809)	91.2% (363 of 398)
Respondent is prohibited from attending at or near the victim's residence	95.3% (770 of 808)	86.9% (344 of 396)
Respondent is prohibited from attending at or near the victim's place of work /business/school	17.5% (144 of 804)	
Respondent is prohibited from attending at or near location that victim regularly attends	6.7% (54 of 805)	Not applicable
Respondent is prohibited from attending at or near children's daycare/school	12.2% (98 of 803)	Not applicable
Victim is granted exclusive occupation of the residence	63.8% (508 of 796)	58.3% (234 of 384)
Peace officer to remove respondent from the resident	40.1% (319 of 796)	11.3% (20 of 177)
Peace officer to seize and store weapons/respondent must deliver weapons to police	11.4% (90 of 788)	9.3% (36 of 386)
Granted temporary possession of necessary personal effects	1.4% (10 of 727) to claimant	8.6% (15 of 174) to respondent 13.2% (23 of 174) to claimant
Peace officer accompaniment to remove personal effects	41.4% (328 of 792)	18.1% (32 of 177)
Respondent required to reimburse victim to monetary losses	Not applicable	1.1% (2 of 175)
Either party is prohibited from taking, converting, damaging, or dealing with property in which the other might have an interest	Not applicable	1.1% (2 of 176)
Respondent is required to post bond	Not applicable	0
Respondent (only) is required to attend counselling or therapy	Not applicable	8.5% (15 of 177)
Respondent and any other family members required to attend counselling or therapy	Not applicable	2.8% (5 of 176)
Other conditions/provisions (unspecified)	8.5% (68 of 803)	60.4% (131 of 217)

The prohibitions of the QBPOs are presented in Table 19. Note that the information detailing these was not necessarily recorded in the files, so represents estimates rather than fact.

The lengths of time for which the orders were granted varied considerably (see Table 20). The categories cannot be easily compared because the length of days varies. However, note that a small number of the orders are in place for less than two weeks and another 12% are for less than one month. At the other end of the continuum, a considerable number were granted for a year or more, and some were given an indefinite length. The legislation does not actually allow protection orders to extend beyond a year, so some rulings appear to be in inconsistent with the legislation.

Table 20: Length of QB Protection Order

Number of days	N=543	Percent
One day to 13 days	17	3.1%
14 days to 29 days	65	12%
30 days to 59 days	61	11.3%
60 days to 89 days	41	7.6%
90 days to 179 days	102	18.9%
180 days to 269 days	98	18.1%
270 days to 365 days	113	20.9%
Over one year	22	4.1%
indefinite	22	4.1%

The reasons that the 166 orders were not granted in QB were documented as follows: no immediate protection required (10 of 166 or 6%); insufficient evidence that domestic violence occurred (2 of 166 or 1.2%). Two (of 164 or 1.2%) were because the claimant did not fit the definition of "cohabitant" as defined by the Act.

In about one-half of the situations in which the order was not granted or confirmed, the claimant (sometimes in conjunction with the respondent) asked that the order be vacated (65 of 145). The other almost half of cases were dismissed because neither the claimant nor the respondent appeared at the review (65 of 145). Note that failing to appear could be as a result of the claimant wanting the order to lapse, not being aware of the need to appear or because of difficulties traveling to the Queen's Bench court. In two instances the respondent had not been served, in several other cases the matter was being dealt with in other ways. In an additional 35 files, the reason the order was not confirmed could not be ascertained.

Seventy-two cases underwent a second review at QB. Of these, sixteen were granted (22.2%), eighteen were varied (25%); six were revoked and a new order granted (8.3%). Twenty-nine (40.3%) were dismissed/revoked and/or denied or vacated.

5.6 Summary of the Court File Review

In summary, the majority of relationships in which claimants requested EPOs had a history of abuse, with one-fifth having had previous orders and almost half criminal charges against the respondent. The fact that the police had not (at least yet) laid criminal charges in almost 85% of cases suggests that the EPOs are being used as a tool in which

criminal charges are not applicable, one rationale for their introduction initially. However, victims in some jurisdictions are also applying for EPOs even when criminal charges have been laid.

Of the cases in which we have documentation that the applications were heard by a JP/Provincial Court judge, the majority were granted. Of cases that were reviewed in the Court of Queen's Bench, 70% were granted or varied. As such, the applications that are heard and reviewed are typically validated. Interestingly, some of the prohibitions are rarely if ever utilized, a fact that may be addressed by the interviews with JPs and judges.

Several trends over the last two and a half years were noted, with EPO applications increasing substantially in Edmonton in particular. Concurrent with this is an increase in claimants applying themselves in Provincial Court rather than utilizing the police and Justices of the Peace (again mostly in Edmonton). More applications made by the claimants themselves were denied, signaling problems in this process.

6.0 Primary Stakeholders' Perceptions of *PAFVA*

In addition to the quantitative court file data presented in Chapter 4, this report includes information from interviews conducted with 180 key informants. They included the following:

- Mandated reporters (30 RCMP or city police officers; 26 Child Welfare workers);
- 20 Justices of the Peace or judges;
- Front-line service workers not mandated to report but that are often involved with the reporting process: 18 court administrators from both provincial and Queen's Bench courtrooms;
- 17 Victim Assistance workers from units associated with police services;
- 31 shelter directors/staff;
- An additional 34 key informant interviews with justice and community agency stakeholders in Calgary and Edmonton;
- Four claimants: two women who obtained EPOs and two who were dissuaded from applying.

Chapter 5 focuses on the perspectives of key informants whose positions put them in direct contact with claimants and respondents of emergency protection orders: the police and child welfare workers that are mandated to apply for EPOs, the Justices of the Peace or judges that grant EPOs or review them at the Court of Queen's Bench, and the court administrative staff that assist claimants and are present during hearings. The results are a summary of the comments from these respondents with respect to what they consider the strengths of the *PAVFA*; accessibility; the application process; the use of EPOs and other options such as restraining orders and criminal charges, the consequences of breaches and their opinions about whether EPOs make an important difference and prevent violence in future.

Throughout the chapter, we utilize quotes from the interviewees to illustrate the issues presented. The quotes are chosen from a number of alternatives because they make the point more succinctly or are from a group of stakeholders that has a different mandate. In addition, we present comments from interviews with the four women who had applied for EPOs, as well as a further 69 case examples with which the key informants had direct experience.

6.1 The Perceptions of Mandated Reporters

Currently the only professionals mandated to utilize the *PAFVA* legislation are police officers and child welfare workers. The responses of each will be presented separately in this chapter.

6.1.1 The Police Utilization of *PAFVA*

The major cities of Alberta and some Aboriginal reserves each have their own police services. Other Alberta locations are policed by RCMP officers that can be transferred into Alberta communities from anywhere else in Canada. If they have been

posted in provinces that have similar civil legislation to the *PAFVA*, such as Saskatchewan and Manitoba, they may be aware of the potential benefits of emergency protection orders. If not, they likely need information and training about *PAFVA* on arriving in Alberta.

Of the 30 interviews with police officers, 18 were with the RCMP, one was with a police officer from an Aboriginal reserve and the remainder was with police officers from cities. Of those interviewed, half (15) stated that they or someone else in their office had assisted with an EPO application, although the numbers were typically only one or two. Of the eight who had no knowledge of EPOs being used or that noted that they chose not to use them, all were RCMP officers working in small rural communities. Seven interviewees did not specify whether EPOs were used in their communities.

Keeping in mind that the *PAFVA* legislation was never intended to replace criminal charges when appropriate, seventeen police respondents stated a preference for using the Criminal Code to deal with domestic violence incidents, if possible. This is an appropriate use of their primary mandate to lay criminal charges:

> *We use the Criminal Code and undertaking and a recognizance. We take them before a JP at bail hearing and they are released with conditions such as no contact, no use of alcohol.* (RCMP officer)

> *Only used it once. Overkill if laying charges. Been to a 100 situations where you could have used an EPO, but always arresting the subject and removing him anyway. With an EPO, goes to a hearing officer, EPO granted then the file is closed. There's a court date but nothing is followed through by police. With charges there are all sorts of follow-up. File is open, it's on my desk.* (Police officer on reserve)

> *Most cases in the district involve severe violence that warrants laying charges. There is very little 'grey' area in reports of violence. Violence is almost always severe enough to warrant charges and follow-up with conditions of release.* (RCMP officer)

Eight officers described their perceptions that EPOs are useful when, either there is insufficient evidence to lay criminal charges or they know that the victim would not support a criminal charge by testifying against the abuser.

> *In the case of seniors, lots do not want to lay charges or feel too guilty to go the criminal route. The EPO is good protection in that case. Is a way to keep the abuser away without having to lay charges.* (City police officer)

> *An EPO is great, especially if the woman does not want to support a charge. Prevents the woman from having to testify, which is a big fear. The accused is easier to convince because they do not get a criminal record, particularly in cases where it is a professional like a medical doctor.* (RCMP, small city).

> *With an EPO, she comes in, has been abused for the past 5 years and has put up with mental and physical abuse, nothing to charge with, and she wants out of the relationship. He has been threatening and intimidating her and it is not anything physical. Perfect for an EPO. If there is no criminal charge, she at least has this choice.* (RCMP officer, rural)

Seven officers, all from Alberta cities, described using both criminal charges and emergency protection orders to deal with some circumstances because the provisions of an EPO last longer if the criminal proceedings are dropped or completed. This procedure, known as "layering charges", is being increasingly used in several large Alberta centres

because it provides longer term protection for claimants. However, some JPs or judges will not grant an EPO if the respondent is in custody because, in their opinions, this circumstance does not constitute an emergency as defined by the legislation.

> *In cases where there is assurance that this guy will not be released and will be sentenced to prison, only then will an EPO NOT be pursued!* (RCMP, large city)

> *If we release on an undertaking, [we tell them] don't have contact with the person and that covers what an EPO covers. However, the accused can be released the next day and with an EPO, the conditions are longer lasting. If the accused is released and if still a threat, can make an application for an EPO at that time.* (Police, small city)

> *JPs don't seem to understand EPOs. If a person is charged and released with conditions they won't issue an EPO. At least twice we've had to go to [Provincial] court to get an EPO. Court hasn't understood why the bail office wouldn't grant them. To protect victims we put stringent conditions on. But that's not good enough. Tomorrow if they plead guilty it's finished, no protection for victims. EPOs help in some situations. If he pleads guilty, court is finished, maybe goes to anger management, but the EPO carries on. Gives the victim peace of mind, something to protect victim.* (RCMP, small city)

One case example described the process of layering charges:

> *One lady feared for her and the children's lives. Her abuser had threatened harm to the kids. We made an EPO application and charged him for the assault on her and he ended up in jail. They served him with an EPO while in custody as we feared he would go to court and plead guilty and she would have no protection. Have not had any calls on this for a breach.*

A number of the police officers that stated a preference for using criminal charges also noted that when there is insufficient evidence to lay charges, they do not consider EPOs as an alternative.

> *Officers in the detachment understand the purpose of EPOs but choose not to use it. When responding to domestic violence, we usually charge the perpetrator and find the EPO to be unnecessary*. (RCMP officer, rural)

> *When a family is deteriorating and there is no criminal offense, conditions have become intolerable. Lawyers and social workers should be applying for these, police do criminal code. If there is no criminal offense, we should not be doing these.* (RCMP, rural)

> *EPOs are redundant*. (RCMP officer, rural)

Whether or not the police perceived EPOs as useful depended largely on whether they had ever used one. Those who had utilized EPOs were much more likely to describe them as helpful and powerful tools, especially in the event that there was insufficient evidence to lay criminal charges:

> *EPOs work very well (so far) in protecting the safety of the claimant. In my experience, the orders are adhered to.* (RCMP officer)

> *The EPO works well for the situations for which it is designed. The order is useful for separating the couple and allowing each the time to think and reflect on the situation.*

The order allows the victim the time to make decisions about the future and ensures that (if the order is followed) the victim will be safe. (RCMP officer)

It's pretty positive, because it's something we can act on. The powers are unbelievable. We can ask for mortgage payments to be paid and money to be transferred into bank accounts and keys to be handed over, and dance lessons to be paid for. Most people don't know that they can be that creative. (City police officer)

The legislation is useful. EPOs are another tool that RCMP can use to ensure safety of victims of domestic violence. EPOs take laying charges and conditions of release one step further. 'Common-sense' is the most useful part of the PAFVA legislation, in that using them ensures that domestic violence situations are dealt with properly from 'square one' and that the end result is adequate and appropriate. (RCMP officer)

The following are several case examples in which the police applied for EPOs on behalf of women with positive results.

The guy had a history of violence. He grabbed and shook his partner and was mentally unstable. Instead of charging him, got an EPO. The woman gets to stay in the home and he has to get help. She obtained an EPO as she was afraid he would come home.

No real violence and we had no grounds to charge. The abuse was verbal and mental rather than physical. An EPO was granted through a JP as we could not arrest. There were no problems in locating him for service of the order. No breaches on this order.

I filed for an EPO and it was approved. During the two weeks in which the order was in effect, the perpetrator moved his belongings out of the victim's home under police supervision. The couple separated and both found new places to live. As far as I know, there have been no further incidents. In this situation, the legislation worked very well in allowing both the victim and the perpetrator to evaluate their situations and make changes.

6.1.2 Child Welfare Workers' Utilization of *PAFVA*

Of the twenty-six child welfare representatives interviewed, nine had used EPOs or knew of its child welfare use in their regions. Fourteen had not used the legislations and three did not specify whether or not they had. Four commented that they had not received any training in the legislation and that many colleagues were not aware that they could use it or mentioned that typically the police took that role:

Police often call Child Welfare would the situation call for that. By this time, the police may have already chosen to apply for an order. (CW, rural Alberta)

I was not aware that Child Welfare workers have the authority to assist a victim to apply for an EPO. Our role is to tell families where to go to get help. It's not our role to give legal advice. I look on all orders as the same. We use no contact orders under the child welfare legislation. (CW worker in a large city):

Child welfare workers are not aware they can apply for EPOs. Nobody knows it exists. So the instances when we would use it are few. If we're not accustomed to using it, it will be hard to use on the rare occasions we want to. I've never received any training and no one else has. (CW in large city)

Seventeen of the child welfare respondents approve of EPOs as options. The primary reason for eleven respondents is that it allows women and children to remain in their homes and the perpetrator is held accountable by being asked to leave.

Sends a strong message to the abuser as CW not always taken seriously by the men. With an EPO, the children are not consequenced by being taken away from their non-offending parent! Wish we had used this before! (CW in a small city)

Concept is great. The victim and kids shouldn't have to move. (CW in large city)

When they're used, they're positive. EPOs are the least intrusive step. The parent has support. For women who have that strength, something they can use without relying on Child Welfare. It has a place. Wouldn't want it to disappear. (CW in large city)

The following case examples are ones in which the child welfare worker considered the EPOs to have been used effectively.

A step-father threatened his teenaged step-daughter and made inappropriate sexual advances to her. Under the EPO he was not to have any contact with her. Prior to the EPO he would attempt contact but after the EPO he did not. This is good because under CW legislation, we cannot place restrictions on this dad.

There was a criminal charge for partner assaulting this woman. He was released with a no contact order and he took her to civil court for custody of their child. He was granted visitation of the child for weekends even though there was a no contact order in place. The mother was petrified to let the child go with the father for fear of the child's life. The mother contacted CW and the CW worker got an EPO.

6.2 Justices' of the Peace and Judges' Perceptions of *PAFVA*

In total, we interviewed 15 justices of the peace, four provincial court judges and one judge from the Court of Queen's Bench. Twelve mentioned that they perceive EPOs as one effective tool to address violence when criminal charges were not applicable.

This legislation is a good attempt to deal with an obvious problem. (JP)

EPOs are useful tools to protect victims of domestic violence, with one caveat: you're hearing from one side so possibly abrogating someone's rights (JP)

Useful tools in protecting the civil rights and safety of victims and their children. A tool. Should be one of many. Can be effective in a lot of situations. Some situations, any order you put in place they will breach. Not the entire answer. Need to educate. (JP)

For the vast majority, EPOs will protect. Provides that calmness/distance that can otherwise escalate. Potential for violence is nipped in the bud. (Provincial Court judge)

Notwithstanding these positive comments, a number noted some problems in the process or with some applications that will be presented in later sections of this chapter.

> *If you ask JPs in Calgary and Edmonton, the applications they dislike the most are EPOs. Things we do daily get a rhythm because we do them frequently. Don't do enough EPOs to get a rhythm. Quite often they come in when you're busy. Have a high priority. Throws off the rhythm of the work you're doing.* (JP)

6.3 Applying for an EPO Application

In light of the question about whether EPOs are accessible, it was of interest to hear the mandated reporter's and JPs/judge's perceptions of the procedures to apply for an EPO. This section considers accessibility to an application (through the police or provincial court), the process of applying, and difficulties with specific provisions of the legislation.

6.3.1 Accessibility to EPOs through the Police

Congruent with what many of the police officer key informants self-reported, several child welfare workers and JPs identified that in their communities the police prefer not to use the legislation. This lack of access is particularly problematic in rural and remote communities where the option of the victim applying through Provincial Court is limited or difficult. Another circumstance raised by these key stakeholders was when the police did not have the evidence to lay criminal charges, but were not willing to assist with an EPO application:

> *Police do not want to use PAFVA when there are threats of violence. I'm not sure if they are, instead, charging. Their response is that "it is not violent enough" which led to belief they are doing nothing and placing it in the hands of the CW worker to do something regarding the families' safety.* (CW worker, small city)

> *I do not believe the legislation is being used as anticipated. Police see themselves as 'legal' enforcers, and don't see that it is their job to deal with 'civil' matters. The police in my district do not like PAFVA. The highest officer in my district has instructed his officers not to use it.* (Court administrator, small city)

> *Tried one but the police did not know what we were talking about.* (CW, remote community)

> *Police officers in my district prefer arresting and applying COR to perpetrators of abuse when the situation calls for it. EPOs are a 'last resort' if none of the other solutions are applicable or appropriate*. (Court administration, small city)

One of the women claimants that we interviewed had asked the RCMP about an emergency protection order in 2000, shortly after the legislation came into effect:

In 2000, when he abused the two older girls. I thought "Why is it every time we have to pack up and leave? Why are our lives are so disrupted, thrown into the shelter." I approached a police officer, RCMP. I said "I've heard of this new Emergency Protection Order through the shelter. Now this time can you make him leave?" And they said "Nope. You take you and the girls and you go to a shelter where it's safe." It was just, no. (The police laid assault charges against him)

Another woman claimant who eventually was granted an EPO recounted this more recent (2004) experience with the local RCMP office:

A place in town told me I needed to call my police and let them know I needed an EPO. I requested one and they told me there was no such thing and that I need to get a restraining order and a lawyer. They didn't have time to waste on people who couldn't help themselves and this wasn't severe enough. They told me I could apply for a restraining order, but the likelihood of them being able to enforce it was next to none, so why waste my time.

6.3.2 Accessibility in Rural Alberta

Given the limited availability of Provincial and QB courts in rural Alberta, the police and child welfare workers applying through Justices of the Peace is the most common method of applying for EPOs. Several key stakeholders mentioned problems associated with this.

> *In rural communities there is a distance of about 45 minutes between communities and the police consider it a waste of time to respond.* (CW)
>
> *In rural context, sometimes the JP's return response time of ½ to one hour long is too long*. (Police, small city)
>
> *An EPO takes longer to get in a rural area; much faster in the city with QB courts.* (Victim Service worker, rural)
>
> *It is not being utilized, from a rural point of view. Officers don't know what it is or how to use it. If a person can't drive into the city and has no one to take them to QB, it is inaccessible*. (Court administrator, small town)

One possible solution to the accessibility problems of those living in rural Alberta was suggested by a police officer.

> *Easier in a major centre like Edmonton. Might be helpful for the rest of the province to have a common call point in north and in south, regional domestic violence apparatus.* (Police officer, large city)

6.3.3 The EPO Application Process

Thirteen police officers and five child welfare workers who had used EPOs described the application process as simple:

> *It's an easy tool both for police and civilians applying on their own*. (Police officer, city)

The application process is amazingly simple. From the time they pick up the phone until order is heard and granted, under 30 minutes. Both civil and criminal legislation options are important. Important that they coexist. Some circumstances better dealt with by criminal charges than by civil legislation. (Police officer, city)

Application process is fairly easy. Other jurisdictions see it as onerous and it really is a step by step easy process. Would not change anything about the process. (RCMP)

One of the women claimants who had obtained an EPO with the assistance of an RCMP officer in northern rural Alberta described the application process as relatively straight forward:

> *I had heard about it on TV, only in a bad way.* (The policeman talked to you about it?) *Yes, it was a lady constable. We did the EPO over the phone with the judge. He was to not be within 1000 yards, no contact either written, oral or phone or by members of his family, no contact with the children either at school or the shelter. I had full custody. It was really good. (Did you feel safe as a result of the EPO?). I felt better for the children. I did not feel safe; I knew that if he wanted to, he would find me. If he was angry enough, it would not stop him.*

Other police officers (the majority of whom had applied for EPOs) and justices of the peace reported some difficulties with the amount of work involved in the application process, using such terms as "frustrating", "arduous" and "cumbersome":

Obtaining an order is tedious and this prevents officers from applying for more. The conditions are too strict (definitions of violence, of family). Applying for the order involves too much paperwork and 'red tape.' (RCMP officer)

Obtaining an EPO is frustrating. The seven day review period is often not practical because officers are very busy and the review period is inconvenient. I suspect that surrounding rural detachments feel the same. EPOs may be more practical in larger cities where there are more officers to handle the changing paperwork and attend the reviews. (RCMP officer)

The intake forms can be confusing; questions interpreted more than one way. (City police)

The application process takes quite a while: 30 minutes to an hour. Average bail hearing doesn't take that long. Takes a big chunk out of the shift. They're [police] supposed to send their notes with the application. Then they fill in the order. Last one that came in, the police didn't have all the information. (JP)

It is being under-utilized because of the cumbersomeness of the process and too much paperwork; it intimidates the person who is filling them out. If simplified, would be used more often. (Victim Services worker, rural)

A cumbersome process. Sometimes the police fill out the documents, sometimes not. We have to ask a lot of questions. The form is repetitive; no room to write and need two pages instead of one and a more efficient form. (JP)

Some police and RCMP jurisdictions utilize Victim Services personnel to assist with the application.

It's used because a Victim Services person knows how to use it. The application process is moderately difficult. Victim Services unit well versed with it. Victim Services does everything: preparing the EPO, Victim Impact Statement, referrals to services. They're invaluable. Help the claimant take the EPO for review in QB. (RCMP officer)

Victim Services are an integral part! VS conduct applications on behalf of clients, provide sworn evidence. With sworn testimony of the claimant, they cannot recant at a later date! This serves to protect the client in the future. (RCMP officer)

No difficulties applying the conditions of the order. We have a competent Victim Services unit. Victim Services removes claimants from the home, helps with care of kids while claimant is busy with police. Consistent follow up with Victim Services helps protect victims after breaches occur. (Police, small city)

6.3.4 Accessibility and Consistency of Justices of the Peace

While many JPs were described as accessible and helpful in providing feedback about what characteristics of cases warrant granting an emergency protection order, a barrier to the EPO application process noted by several police officers and child welfare workers was accessing and the response of some Justices of the Peace.

JPs are not always easy to access, a wait or just unavailable for police wanting to use immediately. Easy in the day, not at night. (City police officer)

Inconsistency of JP's, some will give them all of the time and some won't any of the time. They interpret the law differently. (RCMP)

At first, there seemed some inconsistency with JPs; some applications granted and others not. This has seemed to improve quite a bit lately. (City police officer)

At times the JP has grilled the police officer about why the CC was not used and the police did not go CC in respect of the claimant's desires. (Police officer)

In conversations with other child welfare workers and police officers, the orders are not effective. Certain JPs are responsible, as not one EPO has been approved in the district since the legislation was enacted. The continued decline of applications by JPs has caused the police to stop applying. This has happened enough times that officers do not apply for orders unless they assess the victim to be "in imminent risk for fatal injury" as this was the reason that past orders were declined. (CW worker in rural community)

6.4 Applications to Provincial/Queen's Bench Court

While most of the key stakeholders commented on the EPO applications through JPs, fewer comments were with respect to the victim applying through the Provincial Court. As part of the *PAFVA* review, we interviewed 18 court administrative staff from provincial and QB courts across Alberta. In their positions, the court staff administers the intake forms and answer questions from those making applications for emergency protection orders. At times this entails redirecting individuals to other resources or alternatives. In smaller, more remote locations, the courts may only be open once a week or less. Overall, the court staff perceived emergency protection orders as accessible.

EPOs are accessible, however in my district there is no resident judge to hear the reviews. A judge only comes in one time per week; however the bail office is always available to hear the applications. (QB staff, small rural community)

It's accessible during the day. The claimant can go down to the provincial court and fill out a one page intake form and then they see a judge. It can take anywhere from 1-3 hours depending upon if the judge is in trial or not and time it ends, oral presentation of evidence; relatively easy process. (QB staff, large city)

However, access can sometimes be difficult and the process confusing:

Due to misinformation, sometimes they go to the police station and then to the courthouse and we send them back to the police station. So, clients get the run around at times. Some claimants may get as far as the police station and staff assumes they are asking for a restraining order and send them to the courthouse. There is confusion with EPOs and RO's (Court staff, small city)

Only seen 5 or 6 applied for. Accessible, but public doesn't know it's available or how it works. RCMP not giving it as an option. When people come in, court staff are getting the story and identifying the EPO as an option. They recommend it to someone in fear for themselves and their children. Also tell them about other options like custody and access orders. Access a problem for one with limited English. (Court staff, small community)

One of the women claimants that were originally refused by the RCMP in her home town recounted the following story that culminated in her receiving an EPO from a Provincial Court:

A lawyer recommended that I go to Red Deer (from rural town). Red Deer told me they don't do them and my choice is Edmonton or Calgary. It's a 4 hour drive. (Did you understand the form?) *A couple of places I was, "what do I put there?" The hardest part was putting down everything that had gone on. I had justified, rationalized and ignored many things. To have to write them down was hard. Then to stand in front of a judge and say, "Yes these happened" when the whole time I'm doubting my own credibility because he undermined me so drastically. I was under a time crunch. I had an hour to fill out: it was the only time they could see me. There was a lot of repetitive stuff.* (Did you get help?)*. My girlfriend. I wouldn't have been able to do it if she had not been there.* (Was the clerk helpful?) *She was really fabulous, very helpful.*

One provincial court judge made a compelling statement about the difficulties in processing some applications:

They come into court; we cannot plan ahead of time. They just appear with their children and can wait all afternoon (3 hours at times with kids) to see a judge (will always see them, even at the end of the day). They come without the police, seldom with a lawyer and they are presenting evidence, crying, to a judge who knows nothing of their case. The judge is in an impossible situation. They are not screened; there is no testing of truth. The judges' role becomes that of Crown and judge. If we refuse them, the consequence is that harm could come to the family and, thus, we err on side of caution.

6.5 EPOs and Restraining Orders

One question for the primary stakeholders was to compare the strengths and weaknesses of EPOs to other options, especially retraining orders, another civil remedy. The mandated reporters, judges and JPs and court staff consistently reported three

advantages of emergency protection orders over restraining orders: they can be obtained more quickly, at no cost, and have stronger provisions.

> *EPOs have more 'power' than restraining orders because they offer more condition. The police can use to ensure the safety of the victim. Restraining orders are just 'pieces of paper' and only prohibit contact between the two parties*. (Court staff, small community)

> *The [EPO] works best. Simple for applicant and JP. Threshold is easily understood. Immediate. Can be done ex parte, which you can't do with restraining orders*. (JP)

> *Better than a RO in that it allows more relief in that the woman can stay in her home, there can be a removal of weapons, not standard terms of an RO. The police serve EPOs and they are free for women*. (Court staff, large city)

> *EPOs supersede other orders such as custody and access. "I do not care about other orders, I am dealing with an emergency and he will hurt her if I do not grant this!" It is a stop gap measure to protect until the 7 day review.* (JP)

Several respondents commented on the available range of options that can be confusing for both claimants and service providers.

> *There are so many options at present, including restraining orders, EPOs, peace bonds. It would be nice if someone would look at one order, or one option.* (Police, large city)

> *Need proper screening of these files and assistance to women that have larger problems. Sometimes what they need is an RO, custody order, not necessarily an EPO. Sometimes they need a food bank!* (Provincial Court judge)

6.6 Expanding Who is Mandated to Serve the Orders

A number of the respondents suggested ways to both address the problems of accessibility to EPOs and to assist in screening the claimants and providing the necessary support to victims whether or not an EPO is appropriate. Several commented on the potential benefits of a centre that deals with abuse comprehensively beyond simply assisting claimants to apply for EPOs.

> *[They] need a place to get comprehensive advice about what they can do: coordination that takes into account all of the family's needs. The women and children are referred to the shelter and then to the police to file charges, who then refer them to court. Then they obtain a custody order and referred to a lawyer for custody issues and the lawyer may refer to child protection and they are sent to all of these agencies and then transportation becomes an issue, particularly for women with children and no job. Many more issues to deal with on top of the DV that also need attention*. (Provincial Court Judge)

> *For victims it's complicated, overwhelming. Women or men need hands-on help, someone to walk them through the process. With the majority of files, there's some difficulty with learning, cultural barriers. They don't understand court. English may be a problem. For most, it's not going to happen (they won't go through with it unless they have help.) Need some place that could advise client. We could say to client, contact this office, they'll help you.* (Child Welfare, city)

Several stakeholders suggested expanding the pool of professionals that are mandated to contact JPs about EPOs.

> *I would like to see one women's shelter worker trained and designated to apply for these orders. It is important to provide thorough training. Shelter workers are ideally suited to*

apply for the orders because they are caring people who have front-line experience with family violence. (Court administrator, small city)

Having other parties able to apply for an EPO is a consideration. The RCMP doesn't have the manpower to make applications, so with training a shelter employee could be designated to apply. (Court administrator, small city)

Victim Services workers and transition house workers should be designated under the Act to apply for EPOs. If VS workers could apply, EPOs would be used more. They're volunteers but well trained, very professional, they have a lot of information about the justice system. On 85% of domestic violence calls, VS is called out. Transition house workers should also be able to use them: outreach workers and supervisors. Would need some training so they know when to use them, and know they can't use them in every situation. (VS worker, small city)

Others disagreed, describing the complexities of interpreting the legislation and the possibility of biases.

I don't think other community/justice representatives should be designated persons under the Act to apply for EPOs. If the police don't understand it… It's more people for me to manage. I end up being the problem solver. (Court administrator, rural centre)

Police and Child Welfare workers should remain the only ones designated to apply for the orders. If other parties would be allowed to apply for the orders then there would be too many people involved in the process and the simplicity of the legislation would be lost. (Court administrator, rural community)

The applications are better when made by police or social workers (CW). Then the claimant is directed to the issues that are relevant. Police know what they need to tell us. Would be nice if the public had assistance in making applications from a lawyer. There's been talk about Legal Aid supplying someone – or a social worker or someone from Victim Services or the police. (JP, large city)

Victim Services units that assist in these applications are sometimes over- zealous. Some Victim Services units may have a gender bias. It's a perception on my part, anecdotal. They seem to present with. "You have no choice but to grant this". But they need to meet the threshold to be granted. (JP, large city)

6.7 Definitions within the Legislation

Two central issues that determine whether applications are denied are the definition of a family and the definition of emergency. Six respondents (two judges, one JP and three police officers) mentioned problems with the definition of a family member or whether family members were currently living together.

A lot of times, applications don't qualify under the legislation. A brother and sister have a dispute and do not live together, no violence in the relationship. The definition of family is restrictive and cases such as elder abuse, not reflected in the legislation if you are not living with the person. They should be time-dated, where you have lived with them for a period within the last 3 years, for example. (Provincial Court judge)

Applies to parents of children who are abusive to them but you cannot obtain an EPO on behalf of a grandparent abused by a grandchild, unless the grandparent is a guardian to the child. (RCMP officer)

Some people applying for an EPO lived together a year ago, or months ago. Those are not valid. (JP, large city)

Many people who do not live together experience violence and cannot access orders. (Lawyer, large city)

I would like to see the scope of the Act widened to include people who don't have an 'intimate' relationship with the abuser. The current definition causes a lot of people to 'fall through the cracks'. (Court administrator, small city)

In the following two case examples, EPOs were not granted because they did not fit within the definition of family:

A grandmother had a grandson trying to get money from her but the grandson did not live with her. The case did not fit the family conditions on the EPO. (JP)

A father reported that his teenaged daughter was maliciously bullied at school and these bullies were coming to the home and harassing the entire family. An EPO was declined. It fell out of the Act's definition of 'family.' (Court administrative staff)

More commonly the problem was that the definition of the situation as an emergency was not met. As noted previously, if the respondent is in police custody, many JPs and judges typically do not grant the protection order. This issue was raised by 14 JPs and judges and three RCMP officers.

Might arise in an altercation where person is in custody. In this case it's not an emergency. An emergency may be present if the person is released. If there's a bail hearing there may be release conditions that deal with no contact, like can't go back home. But to grant an EPO before it's decided whether there'll be a bail hearing is taking the step before it needs to be taken. (JP)

Police lay criminal charges and the guy is in custody and they use an EPO in case the guy is released without good conditions. We do not want to second guess what the judge WILL do. Emergency aspect needs to be there as this is a drastic remedy. Throwing someone out of their home, the allegations better be clear and an emergency. We are getting one side of the story and in the 7 days, the guy might not have any money and where does he go? (JP)

JP's will NOT grant an EPO if the guy is in custody! If the guy is released within 48 hours for example, she is not provided any protection! While he is in custody, her situation is not deemed an Emergency! Also, if the guy leaves the scene of a domestic scene (hiding in the woods), they will not grant an EPO even though he will come back as soon as the patrol car leaves the driveway! (RCMP)

The decision to not grant an EPO when the respondent is in custody may fit the definition of emergency, but is at cross-purposes with the recent practice of some police departments to layer the orders. In the court file review, some respondents noted on their applications that the police officers had directed them to apply for an EPO, in some cases

before they would lay charges. The utility of layering orders is compelling, and was anticipated as an option when the legislation was conceptualized.

Others key stakeholders had more general questions about deciding that the claimants' situations warrant being considered an emergency.

> *We consider it an emergency. We drop everything to get it done and find the social worker has gone for coffee. On one occasion it took them two days to find out about the program. What was an emergency two days before, by then was borderline*. (JP)

> *Is it an emergency? These are not easy applications. If someone is applying there is some concern there. It's your judgment how serious and immediate it is. It may be a terrible situation, but you have to use your judgment. Woman may have been terrorized for years and only now got the nerve to come and apply*. (JP)

> *Denied twice, but in both cases JP could explain why and the reasons were reasonable. In one case there was an absence of immediacy of threat. Respondent had left 10 days before and hadn't attempted to come back. Claimant had asked to be left alone and respondent seemed to have respected that*. (RCMP)

> *They lived together and he was coming and going for work (we often see this in outlying areas, men working out on the rigs.) When he was away he sent inappropriate emails, threatening. Was this an emergency?* (JP)

> *The word 'emergency' is problematic for officers and the bail office and leads to some misunderstandings. In the police's opinion an emergency is likened to 'having a gun pointed at you'. Under PAFVA a victim of violence can 'feel' they may be in danger. In my district, unless police define the situation as an emergency, the victim is referred to QB to get an 'on notice' 10 day protection order. Clarifying the word 'emergency' would be very helpful, as the point of the legislation is to protect those who fear for their safety, not just those in immediate danger*. (Court administrator, small city)

The following are several case examples in which applications for emergency protection orders were denied because the circumstances were not perceived as emergencies.

> *A woman said there'd been no family violence until her husband threw his keys at her; actually in her general vicinity. He was leaving to go up north to work. She wanted exclusive access to the home. That did not seem like an emergency*. (JP)

> *Several weeks ago had a situation where a restraining order should apply. Was on Sunday. Person could go on the Monday and apply for a restraining order. Not an emergency*. (JP)

> *A woman came to the shelter and we suggested an EPO. She'd tried before but was turned down: not enough physical abuse. When mom confronted him about the abuse (of their child), he pushed her. Later when she was in the shelter, they would not give her an EPO until she left the shelter. We argued and it took a lot of work in that we had to write a letter to the police to get action.* (Shelter director)

A JP suggested that it would be helpful to have decisions to review in considering the circumstances currently before them as is available in other provinces:

> *With the definition in the Act, it's not hard to determine if it's family violence. The emergency part is harder. If we could read some decisions… The JPs have decisions from other provinces, Saskatchewan and Manitoba I think. They got them from a JP in Edmonton. They don't have computer access to Quick Law. Don't know if there are published decisions. It would help us, even if there were only 10 cases to look at.*

One JP summed up the discussion well when stating the following:

> *The biggest problem is the legislation doesn't define what an emergency is. The definition has evolved. I don't think it's being used the way it was originally intended to be used. If it was meant to be used this way it should just be called a Protection Order. I wish we had a clearer mandate about which cases should apply*. (JP)

However, as a QB judge noted:

> *There is a lack of clarity around the words 'serious' and 'urgent' in the order, the word emergency being a misnomer – the legislation is not clear whether both need to be present or just one.*

If the *PAFVA* legislation were revised, one option that would address the previously noted common situations would be to develop protection orders similar to those available in Manitoba and Saskatchewan to be applied in non-emergency situations.

Other judges and JPs noted that, when in doubt, they would often grant the order and allow the issues to be decided at the Queen's Bench review, at which time both parties could be present and represented. The following are examples of this practice.

> *In deciding on EPOs I keep in mind: a). it's an emergency, b). sometimes skimpy information, c). subject to review. May not know status of custody arrangement. Will be sorted out when they get to the review and turn around is quick.* (JP)

> *If family violence has occurred and there's an emergency, a need to ensure protection, then EPOs are appropriate. [There is a] risk in ex parte that civil rights are not given full credit but that's remediable on review. Short enough time between application and review. Long enough that cooling off can occur, common sense can prevail. Works to get people quickly in front of a court. The respondent knows the order is in place, gets back to court for the review and has a chance to speak to it 7 days after the granting of the order.* (Provincial court judge)

> *We recognize that we only hear one side. We are prepared to tweek and will read the legislation to allow it if there is danger, it is only one week and the judge at QB can decide after hearing both sides. We err on the side of caution and let QB decide* (Provincial Court Judge)

> *Custody and access issues have not come up a lot, if the danger is to the mother, can use an EPO to have her safe and if the children are also in danger, can have the EPO include them. I grant the order and let QB sort it out!* (JP)

> *If it is appropriate, I grant the order and let QB decide the issue. Example: violent incidents between gay couples. We'll grant the order because in effect they're a family. Another example: Elder abuse is not strictly matrimonial, e.g. drug dependent grandson robbing granny and she doesn't want to call police.* (JP)

6.8 Serving Emergency Protection Orders

Eight key stakeholders commented on the process of serving the emergency prevention order. Their comments point out a perceived discrepancy with respect to whether the police serve the order or whether it is the claimant's responsibility. The wording of the legislation that, "7(1) A copy of an emergency protection order shall be served on the respondent as soon as reasonably possible by a peace officer or by any other person that the judge directs" is quite clear however.

That there remains confusion about who should serve the orders is potentially dangerous. If women believe that they are responsible for serving the orders and do not know about hiring process servers or cannot afford to do so, they may put themselves at risk by serving the order themselves.

> *In the legislation, the claimant is supposed to have the person served at QB review (via hiring of a server). The police can and have done the serving for clients who are unable to pay. The legislation should be changed to allow the police to do this serving and have it written into the legislation*. (RCMP officer)
>
> *Many women don't have the money to get it served, pay the server*. (CW worker)
>
> *Police felt that it was not their job to serve these orders and after a woman nearly got killed, they were read the riot act by their chief and told it was their job. They now serve them!* (CW worker)

Several others described difficulties that sometimes occur in serving respondents:

> *If the accused is avoiding the police, it can be difficult to serve. However, have found methods other than physical serving that have been acceptable (email)* (Police, city)
>
> *QB only sits on Mondays here, so it is all timing and whether we can serve him in time. We need more time to serve him*. (RCMP)
>
> *One case where this woman orchestrated her divorce and she applied for an EPO and her husband was not served and advised he could not return to his home and breached it without knowing about the order*. (Police, small city)

There are provisions in the legislation for substitutional serving, however several police officers noted that, in their experience, the courts do not necessarily see these as valid.

One of the case examples was with respect to difficulty finding the respondent to serve the order:

> *I could not locate the person to serve them. In that case you have to demonstrate you can't find them and try to get a substitutional order which can only be obtained from a JP. In this case, had a notice in the papers. (Police, large city)*

6.9 The Review at Queen's Bench Court

Consistent with the data collected in the court files presented in the previous chapter, upon review at the Court of Queen's Bench, the majority of EPOs are confirmed

or varied. The review allows the respondent to contest the order or certain prohibitions of the order within seven days. According to the key stakeholders, the process is efficient and counterbalances concerns they might have had about the fact that EPOs are granted hearing only one side of the story.

> *One case where the abuser was the one who appeared in court at the review as the claimant was infirm and unable to attend so the judge had to hear only this part, but they still got the EPO through. (Police, large city)*

> *The woman has bruises and could demonstrate that she was abused and it was successful upon review at QB.* (Court staff, large city)

An issue that was noted by a number of stakeholders was the difficulty with access to QB from rural communities.

> *[There is] some confusion about where to set review hearings in outlying areas. The rule is to set it at the nearest circuit point and if there is no judge, do it by telephone conference with Edmonton. Even if you put the review at the nearest circuit point, in outlying areas it may be hard to get to the courthouse*. (JP)

> *In rural areas without QB court, it is challenging to meet the 7 day review date. We have been told to send them to Provincial Court at the closest docket date. They obtain their EPO via telephone and are forwarded to the nearest provincial court and we assume that there is contact made via telephone with a QB justice. This has been problematic. The person has an EPO so there is no contact allowed but there they are at Provincial Court together.* (JP)

> *The legislation is not designed for rural areas. Rural areas need more intervention services. Leaving an abuser is a process, and without the appropriate agencies to assist in this decision (as many agencies in my district have limited operating hours) the victim may not receive the necessary support to leave her partner during the 7 day review and may choose to stay*. (RCMP, rural)

> *Why does the EPO go to QB for the review? Could be quicker in Provincial court. Because it's ex parte, important not to have too much time before the review, before the respondent can have a say. No reason why it couldn't be another Provincial Court judge doing the review. QB judges aren't always available.* (Provincial Court Judge)

Several interviewees noted case examples in which EPOs were not confirmed at review because of interpretations of definitions in the legislation.

> *The JP's and police are not familiar with the legislation as they granted an EPO to a same sex couple and 7 days later at QB, the person did not get it. It was invalid to begin with*. (Victim Services, small city)

A woman applied for EPO, and obtained exclusive rights to the home and the home was for sale. Upon review, the respondent got a lawyer and the EPO was not renewed. The judge said this was a misuse of the legislation as there was no evidence of violence (QB court administrator)

Several key stakeholders mentioned problems with claimants coming to QB without legal council or being unprepared in other ways.

> *Lack of uniformity in the courts as to how to deal with the situation of the claimant not showing up for the confirmation/review. Sometimes the judge terminates it, sometimes extends it*. (Judge, large city)

> *Claimants rarely get legal council for the EPO review. If they're in the process of divorce they may have a lawyer. Legal Aid is available. Native Counseling Services might help people find a lawyer.* (Court administrator, small town)

Claimants may appear without council despite the fact that many jurisdictions have automatic referrals to Legal Aid or other legal services.

> *In my district, once an EPO has been approved, the court automatically forwards this application to Legal Aid so the claimant can have access to legal counsel for the review period.* (Court administrator, small city)

> *To get council for the EPO review, Legal Aid comes to these communities. Children and Family Services might help. We've started handing out the number of Alberta Link. We refer people to the Family Law Centre in Edmonton, group of lawyers doing family law, free service.* (Court administrator, small community)

Several child welfare workers noted that the QB review process is especially stressful for claimants:

> *You have to go down in seven days and renew it, and that's an almost impossible thing to do on your own. It's a pretty intimidating system, and who really understands it at the best of times. When you're stressed, and you say 'you have to go down to Queen's Bench,' it's 'I don't want to go.'* (Child Welfare, city)

> *I've suggested applying for an EPO to many moms. Not sure if any did, probably for lots of reasons. A combination of: transportation, not understanding fully what it's about, not wanting him to be served - afraid that could escalate the situation, having to go to Queen's Bench, cycle of violence, legal process can be daunting on your own, the perpetrator being there- at QB.* (Child Welfare, city)

One case example described a woman not knowing that she had to appear for the review.

A lady was given misinformation as to when it could be put into place and how it worked. There was a breakdown in communication and how it was to be enforced. They need to reapply (go to QB for review). Not sure if everyone knows. (Shelter director)

The one QB Court judge that consented to be interviewed for this review created a list of concerns, many with respect to the provisions of the orders that were not raised by others. They are as follows:

- Constitutional rights of respondent sometimes denied as they may be jailed on a breach before a hearing.
- Intake does not ask if there are current proceedings like divorce or child welfare.
- The act needs to deal more specifically with who gives evidence, that it not be hearsay.
- The transcript is not prepared for the respondent until the day of review, which can cause a delay since he (usually) has not had a chance to read it.
- The confidentiality of residence is confusing as this is where the respondent needs to "not" be and is usually where they were living anyway.
- Lack of emphasis on the potential to use counselling in the orders (she has not been asked to include this in applications but believes it would be beneficial).
- Unsure why the conditions are for a year and not permanent.

6.10 Circumstances in which EPOs are Not Protective

A number of key stakeholders mentioned that some relationships may be too violent for an emergency or QB order to grant the protection needed. While many agreed that these are the exception, they remain concerned that some claimants see the order as providing more protection than is possible and, thus, may remain in danger.

> *I warn women, "a piece of paper cannot stop a bullet". For some abusers, this is a red flag and I outline laying a charge if an option, as sometimes they prefer to use an EPO rather than laying a charge. I worry because they could be putting themselves at greater risk if he is violent and the piece of paper cannot protect them.* (Provincial court judge)

> *For 66% of the cases, EPOs do prevent future violence. The other 1/3 of complainants think they're walking out of our office with a suit of armor because they have a piece of paper*. (RCMP, rural)

Several shelter directors described case examples of women who were granted EPOs with the provision that they had exclusive occupancy of their home, yet they did not feel safe and ultimately went to an emergency shelter.

> *A woman got an EPO and she came into the shelter because she felt it was not enough, she did not feel safe. He would try to come and get at her while getting into her car, at work. She did not feel safe*. (Shelter director, rural)

> *There was a fight with her husband and an EPO was granted. He came back home and she came into shelter. They are only good if you enforce them. The woman ended up leaving town after the shelter stay and the EPO expired. She said, "It worked for a few days." She did not follow up (for review) after the 7 days.* (Shelter director, rural)

Others described problems with EPOs being granted without physical evidence as in the case of severe emotional abuse.

> *If you have a situation where the woman is terrorized and he is making indirect threats, it is very difficult to get an EPO. There are no bruises and if there is no past history, makes it harder to get one.* (VS worker, rural)

In addition to assessing for whether the circumstances fit within the definition of the *PAFVA,* perhaps a screening mechanism should be utilized to screen for the potential for re-assault or that the circumstances are too dangerous for an EPO to work effectively to protect the safety of the claimant and children. An already-developed risk assessment tool such as Campbell's Danger Assessment Scale for lethality, which is being utilized throughout Alberta by the provinces shelter system, is one possibility.

The screening could be as simple as a question as to whether the respondent has complied with restrictions from previous orders or as complex as the newly developed Ontario Domestic Assault Risk Assessment (Hilton, Harris, Rice, Lang, Cormier, & Lines, 2004). This tool was developed to assess the risk of re-assault rather than to assess lethality as is the case with the Danger Assessment (Campbell, 2001). The 13-item scale was initially a tool for use by police officers but it was found to strongly predict new assaults against either legal or common-law wives or ex-wives.

6.11 Breaches of Emergency Protection Orders

One of the key questions with respect to either civil or legal orders is whether breaches are taken seriously by the police or the judges that hear the breach charges in court. In the experience of several key stakeholders (7 police officers, 2 child welfare workers; 1 JP) the majority of respondents do not breach the EPO conditions or if they do, the breaches are not violent.

> *PAFVA EPOs are useful tools. Most people do obey the order. But if they want to breach, nothing is going to stop someone. That's the best we can do. Most breaches aren't dangerous to claimant, just a phone call.* (JP, large city)
>
> *The EPO works very well (so far) in protecting the safety of the claimant. In my experience, the orders are adhered to*. (RCMP, rural community)
>
> *Breaches involved communication between each party, no violence.* (Police, rural)
>
> *It's a piece of paper. In serious cases don't protect victim, but for the most part, infrequent breaches. Some victims make bad choices about recontacting partner. Not usually one-sided breaches*. (Police, small city)

Others (6 police officers and 4 JPs and judges) noted that the consequences of breaching an emergency protection or Queen's Bench order can be severe.

> *With a breach of an EPO there's a warrant for arrest (similar to conditions on criminal charges). Force and effect similar to restraining order, preventing contact with victim and children*. (JP, large city)
>
> *It is almost immediate, very effective and it holds power with respect to consequences if a breach occurs*. (RCMP, rural community)

With a QB breach, the accused cannot ask for bail. He stays in jail until he is seem by a QB judge (if rural area, he may be sent to Edmonton remand center as the judge sits there every three days). This court has higher consequences and is more serious than a breach of an undertaking. He cannot plead away at QB court and will probably get convicted and a criminal record. (RCMP, rural community)

Some key informants noted problems with the manner in which breaches have been handled.

In Edmonton, there is a problem with breaches. Arrest on a breach, police had the option of using criminal code 127. The breach was heard in criminal court. Judges began to not hear these, to say the breaches were 'frivolous,' and be heard in civil court instead. If a breach is a civil matter, history of breaches does not appear on a participant's record as it would if it heard in criminal court. This creates a lack of awareness for police, but also for judges in civil court who might not be aware of the criminal history. This might have been caused by orders without benefit of police assessment. (Police officer)

Interpretation and application of what constitutes a breach varies by JP. A lot of cases when breaches come before a JP, he releases them. What message does this send? That is why it is good to have criminal charges with an EPO. (Police, city)

We have dealt with breaches. It did not seem to have teeth. Consequences were less severe [than] a criminal charge breach. (RCMP, rural community)

As noted previously, one difficulty is when the claimant breaches the order by having contact with the respondent contrary to the conditions in the EPO.

There is a reasonable expectation that the claimant not contact the offender in person. Act should have a provision: if you're asking for an order, you're not able to contact them either. At least 3 women this year intended to use an EPO this way. Some people think it's a piece of paper used to control, wave it in front of their face. Number one excuse that comes up with guys breaching a no contact order: she contacted me first. (JP)

It's confusing if the claimant initiates contact and he breaks the order/breaches. Our policy is still to enforce the breach. A few factors: possibility the offender is using power to intimidate person, or the victim believes things are better when it is a honeymoon period. These are a small percentage. (Police officer, large city)

Woman sometimes breaches the order and allows him home. (CW, large city)

The following case examples are with respect to breaches of EPOs.

A short-term relationship: controlling, threatening, verbally abusive. She did not have allegations of criminal charges though he was smashing things and intimidating her. She got an EPO and he breached by telephoning her. We arrested him. He got a slap on the wrist at court, told him not to contact and conditions did not change on the protection order. (RCMP, rural community)

A lady has a child with a man. They were no longer together and he became obsessive, harassing, stalking her. He was arrested and charged with criminal harassment. We got an EPO and he went to jail and then probation. The first day out, he contacts her and breaches and is back in jail. He is released and again harasses her. For this guy, the EPO was just a piece of paper. Other EPOs have been successful. (RCMP, small city)

The two women claimants who were granted EPOs that became QBPOs both reported that their partners had breached the orders.

> *This was a second breach because of the 1000 yards (prohibition). Constable X and she checked where he was living (across from the school): his name was on the mailbox and that was within the restraints of the EPO, so they arrested him. The judge threw it out. I was informed after it happened that he was going to be allowed to stay in his place. Constable Y from the police detachment here called me and said that things did not go the way they wanted, that in fact, the judge had shortened the distance on the EPO and said that my partner was allowed to stay, he shortened it to 100 yards. I just thought it was laughable. It clearly showed me how women get hurt in this country every year because people don't take it seriously. Things are put in place for a reason, there has to be sufficient evidence to put something in place.*

> *The order was a joke. The order was a good thing because it gave me backing, personally. It allowed me to walk into Legal Aid and say, "I need a lawyer to file for divorce. I need protection." They took me seriously because I wasn't just another woman walking in claiming abuse. It added validity to my story. But, legally, what a joke. It didn't whether I went to the RCMP in _____, in _____, in _____ . Nobody was willing to enforce it. (Has your ex partner breached the order?) Yup. (How did the police respond?) Oh, "don't be so silly" or, "we'll go and talk to him again" (He wasn't charged for the breach?) Nope. I wanted him to know that it was a serious document and that he'd better just back off. Because even after I had the order he was continually stalking through email. But the police were saying that, "You don't have to read those. You can just get rid of them." So… it's not really stalking, because you have a choice. Just like if he calls, you have a choice to pick up that phone. You have the choice to listen to those messages that he leaves.*

6.12 Have EPOs been Misused?

The key stakeholders mentioned several instances in which EPOs could be misused, although they had few examples of this actually occurring. The two examples involved frivolous complains, when there was no family violence in the relationship or circumstances such as concurrent divorce and custody and access actions when an EPO was used to gain an advantage over the other. The inappropriate nature of these applications was revealed before or during the QB review, suggesting that the review procedure acts as a fail-safe to prevent the misuse of EPOs.

> *EPOs have been issued when there is no history of domestic violence, and yet the legislation was designed to address domestic violence.* (Police officer, large city)

> *The law court office has problems with EPOs. People are directed here if the police don't want to tell them they don't have a good case. There are some frivolous applications*. (JP)

> *I practice matrimonial law. Sometimes EPOs are to gain advantage for a matrimonial action. That's for another court to review. If allegations disclose an emergency even if another motive is implicit, he would still grant the EPO*. (JP)

Some stakeholders have been concerned that EPOs may have been used inappropriately in situations of custody and access. Of an umber of references to custody, the following example is the only one that could be considered an inappropriate use of an EPO to attempt to superceded custody.

> *One EPO application went through, and hours later, a call from child welfare... the mother had custody, had an order, and the child wanted to stay with the father. The father put in the EPO, and the custody order was revealed later.* (JP)

6.13 Do EPOs Prevent Violence in Future?

The *PAFVA* Evaluation Working Group was interested in determining whether, from the perspective of the professionals involved with the EPO process, the orders prevent future violence. A small group of key stakeholders (2 court administrators, 2 child welfare workers and two police officers) stated that they do not believe that EPOs prevent violence in future.

> *No, in my experience, they'll get back together and other problems will lead to another domestic situation. Chunk of paper, a bit of a wake-up call, but in a few weeks or 2 or 3 months it happens again*. (Police officer on reserve)

> *They may prevent future violence for that woman but he moves on to another woman. So, this does not prevent future violence of other families. (CW, city)*

> *I don't believe that any order prevents domestic violence and ensures safety of the victim. The orders are just 'pieces of paper' and cannot guarantee safety. If people want to be violent, such orders cannot stop them*. (RCMP officer, rural)

> *It hasn't been my experience that EPOs prevent future violence. In some cases everything works out fine. Odd time may aggravate the situation, some situations are so volatile. Don't think it makes it worse*. (Court administrator, rural)

A number of the key stakeholders simply responded that they don't know whether the orders prevent future violence (4 JPs, 2 police officers, 1 child welfare worker). The JPs, in particular, stated an interest in receiving feedback about what happens to the EPO orders that they grant afterwards.

> *Don't know if EPOs prevent future violence for that family. Might alleviate the immediate problem. Doesn't get at the cause of the problem, if alcoholic or a violent person. Only protects as long as the order is enforced*. (JP)

> *I am not sure if the legislation will prevent future violence for that family. When the orders are followed, the couple no longer experiences violence as they often separate. However, if the couple decides to reconcile, the victim is even less likely to report new instances of abuse to police as the process is very cumbersome and the restrictions placed upon both parties are strict.* (RCMP officer)

> *Don't know whether EPOs prevent future violence for the family. Don't know the stats: are they confirmed at QB, varied, set-aside? Don't know stats on whether they prevent family violence from occurring. I've seen situations where people have been arrested on breaches. Hopefully they prevent future violence.* (JP)

The largest proportion of key stakeholders (4 police officers, 4 judges/JPs, 3 court staff and 2 child welfare workers) were more optimistic that the orders impede violence from occurring in future.

> *It's a 'homicide prevention tool.' It prevents further violence. It allows the police to take action in dangerous situations where they otherwise might not have enough to lay a charge. They can "do" something, step in before the situation gets worse and provide safety.* (Police officer, large city)

> *In most instances, EPOs/QBPOs prevent future violence for that family. Separation and cooling off period and most people respect the authority of the court. Odd occasion when people are so inflamed either by what happened before or by the actual order that it leads to further violence. But at least with the order the police are in a position to deal with it quickly.* (Provincial court judge)

> *The lives of the family are the important issue. This legislation is useful in preventing him from doing something stupid and keeping the family safe!* (RCMP officer, rural)

> *Yes, they prevent future violence. Message that it's serious, not okay. Person can phone police and get that support*. (CW, large city)

6.14 Training for Mandated Reporters

Twelve of the child welfare respondents and six police officers interviewed for the research received training on the PAFVA in 1999, soon after the legislation was proclaimed. Another five child welfare workers had received more recent training, but five had not been trained at all. Five police officers (mostly RCMP) had not been trained. Even a number of those who had been trained requested additional training as they have had little experience implementing the legislation.

Most of those who had received training described the information as helpful, but perhaps not currently adequate because of staff turn-over and the fact that having not used the *PAFVA* means their knowledge of the legislation is not fresh.

> *I received training in the PAFVA legislation: a 1-day seminar in 1999. I've had had no further training. I and my colleagues are responsible for training new officers based primarily upon our own experience. Since I have not had much experience using the orders, the training might not be sufficient.* (RCMP officer)

> *The training was adequate as it involved a meeting with Crown Prosecutors who explained the orders and how to use them effectively.* (RCMP officer)

> *I received training in the legislation when it was first introduced. The training was helpful and informative but since I and my colleagues have not had to use the order, we are out of experience. However, I know the legislation is there and what it is used for should the situation arise that it is needed*. (CW, rural community)

> *There should be mandatory training on the Act for Child welfare workers. Just the basics: one day or ½ a day. Trainer should be a police officer or someone who knows the Act well, the ins and outs. There'll be a lot of questions. The training should cover what can and cannot be done and under what conditions*. (CW, large city)

> *In Edmonton about 5 years ago for one day. Not sharp on it, cause we do not use it. Good one day training.* (CW worker, rural Alberta)

Others suggested the need for updates and changes in focus:

> *The training did not walk people through when and how to use it. A video and handbook that police did not relate to, and that demonstrated use on reserves, a different use than for municipal police. More provincial training initiatives are needed to differentiate how RCMP might use as opposed to municipal police. Training the year before: people who had no knowledge of EPOs or working experience. A large amount of money spent on travel and telling people that they should be using them. Seemed the JPs had poor training as well, were passing it on to the next shift.* (City police officer)

> *In 1999, the supervisors were trained. Since then, a huge turnover in staff, the new staff are not trained. We went back to business as usual when the training was over as we thought the RCMP had responsibility to do EPOs. Was not enough training to help us implement this legislation, obviously, because we are not using it. Need practical step by step training across disciplines (RCMP, Shelter, Justice & CW)* (CW worker, city)

> *Did not receive any training. Training is needed in assisting and spelling out how they are done and in what situations. The training needs to note the advantages of using the legislation.* (RCMP officer)

The connection between not using the *PAFVA* and not being trained is clear, especially for the police. Of seven officers who received training, six have used the orders at least once and the remainder clarified that several of their fellow officers have used EPOs. Of five that did not receive training (mostly RCMP), four have never used an EPO. Clearly, police and child welfare training specific to the practical aspects of using EPOs could increase their use.

7.0 Secondary Key Stakeholders' Perceptions of the PAFVA Legislation

In addition to the primary stakeholders' perspectives of the *PAFVA* legislation, those who have direct contact with applicants and respondents documented in Chapter 5, we interviewed 31 directors/staff from women's shelters and 17 Victim Services (VS) workers (associated with the police) across Alberta and another 34 key justice and community respondents from Edmonton and Calgary. Of these, 21 justice representatives included social work members of Edmonton's specialized Spousal and Elder Abuse Intervention teams, Crown attorneys, probation, lawyers from services such as Calgary Legal Guidance and government representatives. The 13 community representatives were from counselling agencies with specific domestic violence services and general services such as child welfare, services to immigrant families and those with disabilities. Of the 34 additional key informants, six (two justice and four community representatives) acknowledged little or no knowledge of the PAFVA legislation or emergency protection orders.

The interviews were with respect to views about what is working well and whether there are problems with utilizing the *PAFVA* legislation in their regions. Because shelters are often perceived as the core community agency that addresses domestic abuse, and Victim Assistance workers assist victims of domestic violence, they are in unique positions to comment on the utilization of EPOs, as are representatives from counselling agencies and other services that offer assistance to victims of intimate partner violence.

Although not directly involved in the process of applying for emergency protection orders, these 82 professionals may be in positions to recommend that victims consider emergency protection orders, which is especially important when victims choose not to involve the police or child welfare. They also have worked with claimants who have had difficulty accessing the orders and can add to the information on what happens with respect to breaches of orders. They provide an important arm's length view of the efficacy of the *PAFVA* legislation in Alberta.

7.1 Is the *PAFVA* Legislation Used as Anticipated?

The first issue addressed was whether the legislation is being used as anticipated. The majority of both justice and community stakeholders described the legislation as under-utilized. Some suggested reasons why this might be so:

> *I don't think as many orders are going out as should be, I don't think the police are accessing them. I don't know if that's inexperience with them, lack of training or too much paperwork. I don't think they're being utilized*. (Calgary community respondent).

> *I don't hear about it a lot. That may be because it's just not safe for a woman to utilize. I don't hear about it and you'd think we would.* (Community respondent)

> *Who knows? But the numbers are nowhere near to what we know is the incident rate. So that tells us something.* (Community respondent)

> *Lots of situations where officers, if there aren't grounds for charging, just leave it. With an EPO, the police can assist you. It costs nothing; it's in place right then and there that night; the guy can't come here. It's a very powerful tool, but it's being under-utilized.* (Justice respondent)

It's definitely not being utilized as anticipated, but I think their anticipation was not correct. They expected it to be used a lot more. (Calgary Justice respondent)

It's spotty; some are using it, some aren't. [Do you know why?] *Buy-in at the local level. Someone comes in and asks for PAFVA; some will know how to do it and some won't.* (Community respondent)

Several key informants commented that it was utilized more than they had anticipated:

We all had dire predictions and said, "Ditch it, it'll never be used." But the last report was that they do use it in conjunction with a no contact order. We are seeing it used more than we ever thought. It has far more utility than we thought it would (Calgary Community respondent)

We see a lot of protection orders come through. I see people coming in and getting it, so yes, they are utilizing it. (Calgary Justice respondent)

7.2 Strengths of the *PAFVA* legislation

A number of the key stakeholders commented about the legislation in general. With its specific focus on domestic violence, they believe that implementing the *PAFVA* legislation has increased awareness about the seriousness of domestic violence.

It validates individuals. Something has occurred and it is a criminal act, so it reinforces that family violence is a crime. In addition, it removes the stigma and shame of family violence by bringing it into public awareness. (Shelter Director)

I have seen more public consciousness towards family violence and how we deal with it since the legislation, removing some of the stigma and shame. We still have a way to go. But it is moving in a positive direction. (Shelter Director)

With EPOs, the victim has a huge sense of something being done for her. More meaningful than any other thing Victim Services can do. Someone to help them and something with teeth to it, so less likely to break it. (Victim Service, rural)

The legislation has caused family violence to be taken more seriously by the justice system. I have seen improvement in the performance of the justice system upon the PAFVA legislation because family violence is taken more seriously. (Victims Service worker, rural)

Although many of those that commented positively also had specific concerns, most considered the legislation, in itself, to be well-written and potentially powerful. The following comments document this:

The EPOs would be brilliant; it's good legislation. It's useful immediately. It forever changes the power dynamic in that home. (Justice Respondent)

I don't think it's being used, but as an act, it's solid. (Calgary Justice respondent)

Other respondents were more circumspect:

This legislation was sold as the solution. It is one small part of many more things that have to be done, so it's one piece in the tool kit, but we need a whole truck of tools. I think it was oversold. (Community respondent)

The people who enacted the legislation had unrealistic expectations of what could be achieved by it. Maybe I'm just not in the right place to see how it's being used, however I don't see it as real important. (Justice respondent)

I don't think it's working well. It hasn't had the impact that I would've hoped. I think it was potentially more powerful. (Community respondent)

I was so excited when I heard about it. I thought, "This is going to make a big difference", but I don't see it happening. (Calgary community respondent)

About as many community (7) as justice stakeholders (9) highlighted aspects of the emergency protection orders that they perceived as working well. The most commonly mentioned benefits were that the protection orders are powerful and efficient:

The EPOs are quick; a restraining order takes longer; an EPO has more teeth because if it's breached, it's a criminal matter. (Justice respondent)

The women are always happy they have them. For the most part women feel supported with the EPO. (Community respondent)

I think the legislation is effective. Lots of the judges, particularly at Queen's Bench, take that legislation very seriously. When you put people in front of them with a breach charge, there are heavy consequences. Overall, when they are enforced, good things happen. (Justice respondent)

Safety issues are a big problem, I am happy to see more EPOs recently, again. (Community respondent)

It's apparently working very well for elder abuse, and could be used more for child welfare issues. (Community respondent)

Our philosophy is that they [EPOs] work. We layer the orders. If we can have both criminal no contact and civil no contact, then that's a better route. (Justice respondent)

At Children's Services they encourage women to use it if there is child welfare involvement. They are not as costly and complicated as restraining orders. Certainly you can see more EPOs than restraining orders. If there is any order in place nowadays, it seems to be an EPO. (Community respondent)

Several commented that the length of time that the order could be in effect, up to one year, is a positive. Other advantages, each noted by only one or two respondents, included that children can also be protected under the provisions of the EPO; that police can intervene earlier in cases when there might not be sufficient evidence for criminal charges to be laid, and that the orders send a clear message to the offender

It certainly helps when the children are on there, when he is trying to manipulate them through custody and access; they feel they have that paper that assists them legally. Even if he has access, that child is on the EPO. That is added protection for the woman to have the child on there too. (Community respondent).

The legislation allows police to intervene earlier, especially in cases of elder abuse and abuse in cultural communities (Calgary Justice respondent)

*Up to a year adds an opportunity to provide safety in that it's an order. How many times will people say it's just a piece of paper, which it is? But a lot of offenders abide by the conditions of orders. (*Justice respondent)

If there's a criminal charge to be laid, it's important [to do]. I tell victims if they disclose something that they haven't disclosed to police, that they need to do that, because if they get an EPO, maybe it'll prevent contact, maybe not. So the police laying charges can still put in a protection order to restrict contact. But certainly, there are things that happen that aren't criminal. (Justice respondent)

Several stakeholders commented that if there is insufficient evidence for police to lay charges, EPOs are a useful alternative:

Not a criminal charge, but gives a message that the relationship is over, there is no more contact, it's against the law for the offender (Justice respondent)

If she was still in the home and fearful, she would be able to apply for the EPO which would be reviewed in a week at Queen's Bench to see if was something that needed to be continued. With the other methods, there needs to be legal charges and it needs to wait until something has already happened. (Shelter Director)

Several interviewees approved of the potential use of the prohibition in emergency protection orders that allow women to stay in their homes and require their abusive partners to leave:

The woman could stay in her home and have her kids stay in their school. When they come into shelter, everything is disrupted and they do not have access to their personal belongings. So, that is an advantage. (Shelter Director)

This is excellent legislation that allows the woman to stay in the home, which takes the burden off of shelters which are already full. (Justice respondent)

What's nice about it is women and children can stay home, which is always better. 'Cause you see all those women in shelters are turned away from shelters. (Community respondent)

However, other key stakeholders warned that staying in their homes is not necessarily safe for women and children.

It's a good piece of legislation, which enables the woman to stay where she is. We find a lot of women still feel so unsafe that even though they get this order, they choose to come to a shelter. (Shelter director)

I don't think it has been [utilized as anticipated] and one reason is women do not feel safe in their homes. They don't trust the system; the system is under resourced. I have often heard [women saying] *that there is not going to be police officer sitting in front of my house 24/7*. (Community respondent)

Others noted that a helpful aspect of the *PAFVA* was that an EPO has a "good amount of stipulations", and that the options available to judges are broader than with restraining orders.

The options available to a judge granting an EPO are wider. If you get a restraining order that doesn't necessarily give you some things that an EPO could, such as access to bank accounts. This legislation is wider allows the judge to form fit the order to the situation in a far greater manner than criminal law or a restraining order. (Shelter Director)

7.3 Accessibility to Emergency Protection Orders

No matter how good a policy, it needs to be accessible to those it was meant to assist. The two areas of most concern to the majority of respondents were accessibility in applying for emergency protection orders and training. These two issues are clearly linked, since only with training are police and other service providers aware of the process to apply for the orders.

One prominent theme was not perceiving some police officers (both urban and RCMP) as using the orders, preferring to lay criminal charges if possible, which is of course perfectly appropriate. What is problematic is when the police do not lay criminal charges, but either do not know about or do not offer the option of civil orders to victims. Other police officers were described as not taking victims of family violence seriously and not having been trained in the dynamics of family violence.

> *A woman would call the police and I would say, "Get them to give you an EPO". "A what?" "Put the cop on the line." I'd say, "Give her an EPO." "A what?" "Emergency protection order." "I don't think I can." "Here's the number of a JP"… and you're walking the cop through the process.* (Community respondent)

> *As far as the police, it's just something that they have to deal with because the book says they have to respond. They respond, but when they're ready. If she's phoned a couple of times, she goes down on the priority list. We helped her two weeks ago and two weeks before that and she's still there and he's still beating her. They perceive it as she's not trying to help herself.* (Shelter Director)

> *They (police) don't use EPOs. They use an undertaking with conditions, restraining orders and peace bonds. These seem to protect victims. Not sure what benefit the EPOs would be. Outcome still the same: offender removed and charges laid if he tries to contact the partner.* (VS worker, rural)

> *The local RCMP are of the opinion (that) domestic violence is dealt with adequately through criminal law and do not advise people about the legislation. We heard about EPOs and how they are work in some jurisdictions. They don't work at all here because the police just do not use them.* (Shelter director)

Another access issue involves the application process to obtain an EPO. It is reportedly time-consuming with considerable paperwork for police officers to complete.

> *Police officers are frustrated with the whole issue of domestic violence. It [EPO] is a complicated procedure. The police officers I have spoken to feel it is too complicated to get and impossible to enforce.* (Shelter Director)

> *The police force here is extremely busy, so doing an EPO is really time-consuming. In my opinion it is the amount of work that the RCMP looks at. It is easier for them to do something else and try to get an immediate resolution to the dispute than to do something that is longer term. (Shelter Director)*

In some areas, the key stakeholders noted that EPOs were difficult to obtain in that you need specific threats and a strong element of proof.

> *My belief was that if the claimant feared for her safety that was the only qualification that needed to be in place for them to apply. But we're hearing differently. Specifically we've had a police officer say, "No, I will not apply for an EPO because…" He didn't see that she was at risk. (Shelter Director)*

Several stakeholders suggested that police response is often contingent upon the head of the detachment's commitment to using the legislation.

> *We had a staff sergeant who didn't believe in EPOs. He only believes in charging – he thought the criminal system worked better. We tried to argue but he refused to do EPOs or have any of his members do EPOs. We have a new staff sergeant and there actually have been two in the last couple of months*. (Shelter Director)

> *The new chief of police('s) focus isn't on family violence. He has dropped the extra training hours for family violence for new recruits; they're not getting the breadth of training that the past recruits had. Some members of the police force are familiar with using them and will, but at least as many officers haven't had that training and aren't motivated to them.* (Shelter Director)

Others noted that service providers and those in the general population that might utilize the orders know little about them:

> *They're fairly accessible, but how many people know about them? Cause it's fairly new. We've done a great job getting the word about shelters out so people still see that as the first response. It's going to take a while for them to know that I could stay here [in their home]"*. (Community respondent)

> *If they make it to Calgary Legal Guidance, they'll find out about it, if they make it to a shelter, they'll find out about it, if they get in touch with the domestic court worker with HomeFront, then possibly. But are they generally understood among the police and agencies? I don't think they are.* (Community respondent)

Others mentioned the fact that, as one of a number of tools, many individuals are confused about when and how to use them:

> *It's so complex. There are peace bonds, restraining orders—a myriad of what to use. I asked a lawyer to do a chart for me so that I can understand this. He said, no. The system is complex, so it takes time to wrap your head around the different options. If you're traumatized and scared…* (Community respondent)

> *The way the justice system works, we never simplify anything; it's one more thing on top. So a problem in terms of confusion about what is available. It had a grandiose name, 'Protection against Family Violence Act,' a few simple tools, right? So that doesn't help.* (Calgary community respondent)

> *People have to come to the courthouse. People have to get here, parking is a pain, what courthouse do you go to, who do you talk to? Calgary Legal Guidance is the only agency that has specialized lawyers, but if you don't meet the cut-off level for poverty, you don't get service. They do great work, but that's their policy.* (Justice respondent)

> *I went to court get an application as a test. I was sent to several windows, nobody quite knew where to get the package. They were reluctant to hand it over to me; they wanted someone to do it with me. They were very uncomfortable giving that information, so I wondered what it would it be like to go on your own.* (Community respondent)

Accessibility for diverse groups such as immigrant/refugee populations, Aboriginal clients, those with disabilities was noted as being problematic.

> *Accessibility, language and interpretation issues, including language services. One East Indian woman got an EPO and had to serve the partner herself. Another woman of that*

origin had to go to 3 different police stations to get her statement heard, so this system is not accessible to everyone. (Justice respondent)

They are accessible through police or family court, the latter has more access. They are available, but access might be difficult. There may be a fear of going downtown alone; language may be a barrier, fear of calling the police. They are accessible in terms of no cost. (Calgary justice respondent)

As long as they've made a connection with someone that knows about it. But the big gap is [those with] mental health problems or disabilities or elderly. If they have the information, it appears quite available. (Community respondent)

Some of our clients need emergency restraining orders: the police will help them and if necessary go to court and get one. I would say very accessible, the only challenge is awareness. If they are aware of it, usually they ask for it. (Calgary respondent in agency that serves various ethnic minority groups)

On reserves women don't have a right to the housing, so they can't enforce exclusive use of the property. It's up to the band council. Indian Affairs just put out a booklet on it—how women have no rights to housing on reserves. (Community respondent)

My impression is not all that accessible. The people who need them are not people who are used to fighting for themselves. It's not an easy, user friendly process, so more could be done in that regard. (Justice respondent)

Additionally, in the stakeholders' opinions, there had been little training of police officers to use the legislation, particularly in rural areas. Some of the members are trained, but not all. With the amount of staff rotation in some detachments, new rookies often come who may not been trained previously. This directly affects accessibility to the orders.

There hasn't been a lot of training with the police officers. So been really difficult dealing with police officers that don't know much about it. The RCMP goes through a huge rotation of staff so we're often getting new, young officers here. I just don't feel that they are very familiar with the EPOs. (Shelter Director)

Another issue with respect to accessibility is the response of the justices of the peace to applications.

It just has not been effective. Justices of the peace have been a huge obstacle, and the standard of proof you have to meet in order to get an order for protection, in an emergency, is so high [that] people just give up. (Community respondent)

The police indicated it has been difficult to get them granted. One police officer thought she had a perfect case for an EPO and the justice turned it down. (Shelter Director)

Other comments were with respect to how justices of the peace interpret the nature of the "emergency":

We can't rely on our JPs, whether you're going to get them or not, 'cause you need a real emergency. (Justice respondent)

The take of the justices of the peace on what is an emergency. Different JPs determine that in different ways. If they're in a shelter, it's not an emergency; she's safe. (Community respondent)

7.4 Concerns about the *PAFVA* Legislation

The key stakeholders identified a number of challenges with respect to the *PAFVA* legislation including enforcing EPOs and QBPOs once granted and handling breaches. Once a claimant receives an EPO, there can be difficulties with enforcement; again principally in rural areas where the police are unable to respond quickly due to geographical issues. With violent partners it may be safer to remove the woman and the children to a shelter, if one is available.

> *The intention to remove the perpetrator is good, but in rural situations, not always safe. Sometimes it is safer to move the mom and children to shelter.* (Shelter Director).

> *They don't regard the law; it is only a piece of paper. They will really try to contact to get her and to drop the charges or can be very angry at her and have nothing to lose*. (Shelter Director)

> *With EPOs, the women being able to stay in their own home would work if it was in the community but in the surrounding areas it takes 45 minutes to get to. There is a huge shortage of officers. How can you protect a woman and her children if it takes you 45 minutes to get from where you are?* (Shelter Director)

Another key stakeholder mentioned a problem with breaches not being taken seriously.

> *Another case, the EPO was granted and then the police officer made an arrest for an infraction. She was reprimanded by the judge who changed the conditions on the EPO and did not even cite the offender for violating the EPO. He was rewarded essentially for violating the EPO.* (Shelter Director)

One significant concern was the need for the claimant to appear before the Court of Queen's Bench to have the order confirmed:

> *We run into problems because it's temporary and has to be confirmed. There is such a formality—the victim appears before the judge and thinks they have it, but it's gone if you don't reappear at the review date later. A lot of them don't show up for the review. They're in a state of trauma at the time they go for their EPO, so it doesn't register.* (Justice respondent)

> *I've heard of one case where the judge didn't grant and it seemed appropriate. Another where a woman already had a restraining order but her lawyer suggested that she get an EPO as well, unnecessarily.* (Justice respondent)

Another respondent noted the need for an address on the order and how this compromises the safety of shelters and the other women residents and staff.

> *The last EPO, she had moved here from a first stage shelter but our address was on the EPO because this is where she was going to be and so then he phones the shelter and threatens her, "I know where you are and I am gonna..." He has to know where he has to be away from, that is why they have to put the address. So then, you are on a higher security; it affects lots of things.* (Shelter Director)

Another contentious issue is that the legislation allows judges to mandate not only the respondents to treatment but also the victims (note that this occurred only five times in about 400 QBPOs):

The contentious part is the potential to mandate victims to treatment. I understand why people are upset about that. (Justice respondent)

One of things really disturbing was, in the EPO Act, it is possible to mandate victims into treatment. (Community respondent).

A more recent concern, noted by four justice stakeholders, is that family court judges are suggesting and ordering EPOs in cases where there is no history of domestic violence:

I'm worried about that legislation being abused at family court. It looks like every person going in on a custody, emergency ex parte custody and access is getting an EPO. We get them faxed to our office, and they say history of family violence, none. The whole legislation was based on family violence. (Justice respondent)

It's being abused because people are going into family court to deal with custody issues, and the judge will listen to the dynamics and will say 'it sounds to me like you need an emergency protection order as well' and they throw one in. We get every one sent to our office to review and there's no history of domestic violence on the police system. (Justice respondent)

7.5 Summary of the Views of the Secondary Key Stakeholders

In general, the comments from these 82 secondary key stakeholders support the perspectives of the primary key stakeholders documented in Chapter 5. Nevertheless, they do raise some issues that were not identified as problematic by the primary stakeholders, often because of their specialized expertise with particular populations or marginalized groups.

In summary, the shelter directors and Victim Service workers who have frequent contact with victims of domestic violence and the community and justices respondents identified a number of challenges with respect to the *PAFVA* legislation. These included issues with police discretion with using emergency protection orders, the amount of time and paperwork involved in obtaining EPOs, definitional issues of risk and emergency, geographical issues and implications for enforcement, lack of access to JPs and judges, detachment leadership views on use of the *PAFVA*, whether abusive men will follow the conditions of the EPO and lack of enforceability on reserves.

Overall, these key stakeholders noted several strengths of the legislation including the fact that women and children have the opportunity to stay in their own homes and the abuser could be held accountable for his actions by being asked to leave. The *PAFVA* has increased awareness of domestic violence and can empower victims. That EPOs can be obtained relatively quickly and in emergency situations allows for a sense that their safety is considered important. The directors who spoke positively about the *PAFVA* were more likely to have had experience with the orders and to report that they were accessible to their clients. Further the police and shelter staff in cooperation with other community agencies were jointly promoting the use of the legislation.

8.0 Discussion and Recommendations

This chapter consolidates the information gathered from the legal analysis, the Court file review and the individual interviews with key justice and community stakeholders. The discussion follows the four key components identified in the logic model created by the Evaluation Working Group: Communication, Protection using EPOs, Protection using QBPOs and Training.

The discussion summarizes the research results considering the following factors: accessibility to the EPOs and QBPO orders; the application process/screening; who shall act as mandated reporters, definitions in the *PAFVA* (all aspects of Communication); the safety and provisions of the EPOs and QBPOs once granted, breaches of the orders and whether the order prevent violence in future and training.

The court file data analysis of 981 cases and the individual interviews with 180 key informants provided a wealth of opinions and perceptions of the *PAFVA* legislation and the viability of emergency protection orders. Although the information was sometimes contradictory, the review allows us to come to some conclusions about how well the legislation is currently being accessed and utilized in Alberta. It also allows us to make a number of recommendations for consideration, many of which are congruent with the legal analysis that was conducted prior to the completion of the file review and the analysis of the key stakeholder interviews.

8.1 Communication: Access to the EPOs/QBPOs

The review of 981 court files of Alberta applications for emergency protection orders in the years 2002 to June of 2004 highlights that once the application is heard, the majority of orders are granted by justices of the peace or provincial court judges and are confirmed or varied within seven days by the Court of Queen's Bench. This outcome supports the utility of the legislation with respect to applications that are heard by JPs and that are reviewed in QB.

As noted previously though, the court file review process cannot provide information about the process before an EPO application is made and what happens after the QBPO is confirmed/granted. For this, we rely on the interviews with the 180 key stakeholders including four EPO claimants.

Across the file review and interviews with key stakeholders the intent of the legislation was perceived as positive. The goal of providing an additional and powerful tool for victims of domestic violence, one of the major outcomes for the legislation, was lauded. In general, though, EPOs are perceived as being under-utilized, with the exception of the city of Edmonton and several small rural centres where the police have increased the use of the protection orders substantially over the 2002-June 2004 period.

The first key to accessibility is knowledge about the existence of EPOs. Most of the police officers interviewed were aware of EPOs. When this was not the case it was mostly with respect to RCMP officers that service rural communities in Alberta but whose postings are mobile across the country. If officers have come from a province that does not have similar legislation, they may not be aware of this option.

In contrast, although child welfare workers have been mandated to utilize the *PAFVA* since its inception, a number of those that we interviewed were not aware that they had this authority. Of the other key community and justice interviewees, some were well informed about PAFVA while others, such as directors of agencies in the community that provide counselling to victims, knew little if anything about EPOS and QBPOs. Since such agencies are one venue to suggest options to victims of domestic violence, this lack of professional awareness is an important gap.

The most significant concern with respect to the utilization of the *PAFVA* in Alberta is accessibility of the orders via the police. Although police officers in a number of locations were utilizing EPOs, in rural and remote communities serviced by the RCMP, but also, strikingly, in several major cities such as Lethbridge, Red Deer and Calgary, EPOs are seldom utilized. Across these locations, either the police seem not to understand the legislation or they choose not to utilize it as a tool because it is a civil remedy and they are trained to and prefer to utilize the Criminal Code instead. A lack of training was a factor for some RCMP officers who had moved to Alberta from other provinces, however, most of the police members that we interviewed had been trained.

The choice for some police services to not use the *PAFVA* is in sharp contrast to the city of Edmonton and a number of rural communities that are also serviced by the RCMP that perceive EPOs and QBPOs as valuable tools that protect victims when either the Criminal Code is not applicable, victims would not support the justice process if criminal charges were laid, or the police are layering EPOs with criminal charges to provide additional protection to victims and their children.

In fact, utilizing civil remedies has been associated with claimants following through in court. Two studies (Weisz, Tolman & Bennett, 1998; Barasch & Lutz, 2002) found that victims that utilize both advocacy programs and protection orders were much more likely to testify or have their partner's cases completed in court.

Although claimants in centres where provincial and QB courts meet regularly have the option of applying through those venues, this is rarely available in small rural and remote communities, thus rendering the willingness of police to assist with applications even more critical. To be fair, once EPOs and QBPOs are granted, the police are responsible for handling breaches which can be problematic in the many rural and remote sections of the province.

Another barrier to utilization is that the current mandated professionals, the police and child welfare workers, are not typically perceived by members of the general public as providing support to victims of domestic violence except when they are fulfilling their usual tasks, laying criminal charges or protecting children exposed to domestic violence. Ironically, these professionals are often the last recourse for most victims of domestic violence. As several of the police officers reiterated, most victims contact them because there has been an episode that warrants criminal charges, not when there has not.

Furthermore, as mentioned by several key stakeholders, populations such as Aboriginals and immigrants and refugees seldom perceive the police and the justice system as resources except in desperate circumstances (Pratt, 1995**)**. The case can also be made that child welfare authorities are similarly perceived as "agents of the state" rather than as resources**.**

Across the provinces in which legislation similar to the *PAFVA* has been enacted, the police are the primary gatekeepers to using the legislation. Nevertheless, the literature review about other jurisdictions documented similar issues with some police stating their reluctance to use such civil remedies in Saskatchewan, PEI and the Yukon. The fact that, of the four potential claimants who agreed to be interviewed for the project, three were told by police officers either that there was no such order or that the police would not assist them in obtaining an EPO, signals a serious problem with accessibility. It is also significant that several other provinces allow claimants and/or their counsel to apply for emergency protection orders by telecommunication, including Manitoba. Nova Scotia, P.E.I., and the Yukon.

Several remedies could be considered to improve the accessibility of EPOs and QBPOs to domestic violence victims: mandating additional professional groups to assist claimants in applying for orders; allowing claimants and/or their counsel to apply for orders by telecommunication; and creating other venues for applications including a provincial office accessible by a toll-free telephone number to provide advice and assistance to claimants.

If additional groups of professionals were to be mandated to assist claimants in applying for EPOs (both shelter workers and Victim Service workers were suggested as possibilities) they would need training in understanding the legal complexities of the PAFVA. In addition Victim Service workers would need additional training in the dynamics of spousal violence. Such front-line workers are much more likely to come into regular contact with victims of domestic violence that could utilize EPOs and QBPOs appropriately.

Further, as mentioned throughout, the dynamics of domestic violence are complex and victims have many needs, some of which may be met by an EPO. Additional mandated reporters should already have a strong knowledge of domestic violence so that part of the discussion can be whether an EPO is the most appropriate option or alternatives beyond civil orders should be considered.

> **Recommendation 1: The *PAFVA* Regulations should be amended to provide that applications for EPOs can be made by the claimant with assistance or counsel by telecommunication.**
>
> **Recommendation 2: The *PAFVA* regulations should be amended to broaden the scope of persons who are authorized to apply for EPOs (suggestions include specially trained shelter workers, Victim Service workers).**
>
> **Recommendation 3: Create an easily accessible mechanism for potential claimants to receive assistance and information about whether their circumstances warrant applying for an EPO and other possible options.**

Accessibility also entails ensuring that victims that need protection can make a strong enough case that the violence or threat of violence is significant be granted an EPO. Adding a standardized process that provides information about the nature of the domestic violence would add validity to the EPO application process and assist the justices and JPs that are charged with granting the orders.

In addition to making EPOs more accessible for those who might benefit from the provisions, utilizing a screening tool could also address the serious question of how to protect individuals for whom a protection order will not be effective because the respondents will not take it seriously. This group of claimants was mentioned repeatedly as of considerable concern by judges and JPs, police officers and shelter directors. The phrase "it's just a piece of paper" was mentioned by both victims and professionals throughout the interviews and exemplifies the worry that high risk offenders ignore such interventions.

None of the key stakeholders are so naïve as to believe that safety can be guaranteed to claimants through either civil or criminal remedies. The implied promise of protection via granting an EPO or QBPO is potentially dangerous. Comments from the police, JPs and judges and shelter directors suggest that they have counseled such victims to use alternatives such as assisting the police to lay criminal charges. However there is little documentation of how often this is effective. Asking EPO applicants one question about whether the respondent has complied with restrictions from previous orders, will likely address this concern. If he/she has complied with other orders, he/she is likely to comply with an EPO. If not, a different type of protection order is unlikely to be effective.

The screening process in deciding whether an EPO is appropriate could include a risk assessment of the likelihood of re-assault. For example, professionals that assist claimants to apply for EPOs could utilize the newly developed Ontario Domestic Assault Risk Assessment or the ODARA (Hilton, Harris, Rice, Lang, Cormier, & Lines, 2004). The 13-item ODARA was developed for use by police officers to assess the risk of re-assault was found to strongly predict new assaults against either legal or common-law wives or ex-wives.

Another screening tool, the Danger Assessment (Campbell, 2001), was created to assess the risk of lethality by an intimate male partner. However, the 20-item scale can also be utilized to assess the risk of re-assault (Goodman, Dutton, & Bennett, 2000; Heckert & Gondolf, 2002). The Danger Assessment is being utilized by all of the women's shelters in the province, according to Jan Reimer the Executive Director of the Alberta Council of Women's Shelters, so shelter staff are familiar with its administration. If the Danger Assessment scores were in the range suggesting that the woman was at risk of being murdered by her partner, this would strongly mitigate against granting an EPO, since her safety is at serious risk.

Both tools are relatively short and were developed for use by front-line workers. The results could provide valuable information about the serious nature of the relationship violence to those making decisions about granting EPOs. Further, the procedure often assists claimants in understanding the risks of remaining with their partner. The dynamics of living with an abusive partner involve denial and minimization and the process of responding to screening tools such as the ODARA and the Danger Assessment often assists victims in realizing the risk to themselves and their children (Campbell, 2004). This may then influence future decisions such as whether or not to let the EPO lapse.

Although the use of a risk assessment tool is recommended, police, child welfare workers and others that assist claimants in applying for an EPO can be reassured that the claimants' predictions about whether they are at risk for being re-assaulted has been validated as an accurate predictor of future violence in several research studies, even without a screening tool (Heckert & Gondolf, 2004; Weisz, Tolman & Saunders, 2000)

> **Recommendation 4: That the *PAFVA* assessment process include a risk assessment tool to estimate the likelihood of re-assault by the partner that can provide information to assist in deciding whether to grant an EPO.**

8.2 Communication: The EPO/QBPO Application Process

Even mandated reporters that have utilized the *PAFVA* reported some problems with the application, although even here there were dissenting voices. For example, many police officers who support EPOs describe the process as simple, straightforward in comparison to at least an equal number that described it as tedious or cumbersome. Although there is no official form to apply for an EPO, several were developed by trainers to meet this need, but without official sanction. Several JPs and judges critiqued the "form" as repetitious and as needing to be revised.

It would be worthwhile to establish a legislated form that would streamline the information that is being gathered by the applicant and the person hearing the application. In addition, given the accessibility concerns noted above, it would be beneficial to gather information on the utilization of the legislation by members of disadvantaged groups so that future research can assess this issue.

> **Recommendation 5: *PAFVA* application forms should be established to make the application process clearer and more efficient.**

> **Recommendation 6: The application forms should document demographic information such as the age and racial background and immigration/refugee status of claimants and respondents, including Aboriginal peoples, to allow analysis of the accessibility of the legislation for members of racialized groups and different age-groups. These questions could be designated as optional.**

Another issue relating to the application process is the review procedure for EPOs. The *PAFVA* requires that EPOs be reviewed on the basis of affidavit or sworn evidence (section 3(2)). In practical terms, this means that the claimant must appear, or have counsel appear, at the QB confirmation hearing. This may be another factor in the low utilization rate for EPOs in some parts of the province.

Procedures in other jurisdictions (such as Manitoba and Saskatchewan) are less onerous. In Saskatchewan, for example, the QB judge reviews the paperwork on the file to decide if the order should be confirmed, but still has the option of ordering a hearing if the evidence is insufficient. If a hearing is ordered, the respondent is summoned to appear and the claimant may appear.

The review procedure would also be improved by making it clear that the respondent's compliance with an EPO does not preclude the need for the continuation of a protection order. A similar amendment to Manitoba's legislation is forthcoming.

> **Recommendation 7: The *PAFVA* should be amended to allow for a paper review of EPOs by the Court of Queen's Bench, unless the Court is not satisfied that the evidence supports the original order.**
>
> **Recommendation 8: The *PAFVA* should be amended to provide that "the respondent's compliance with a protection order does not by itself mean that the claimant does not have a continuing need for protection."**

In one of the reported cases considering the *PAFVA*, Justice Veit noted that it would be useful for Queen's Bench protection order applications to gather information about other family law proceedings that are underway, and whether there are lawyers on the record for those proceedings. This information is important to give QB justices a full picture of the matters pending between the parties, to assess any request that the QBPO application be made ex parte, and to avoid inconsistent orders.

> **Recommendation 9: Forms for QBPO applications should require that parties note the existence of other proceedings between the parties, and whether lawyers are involved in those proceedings.**

8.3 Communication: Definitions within the *PAFVA* Legislation

Another issue that can be a barrier to access is the definitions in the legislation with respect to whom and under what circumstances individuals fit the criteria for protection orders. The key informants identified a number of issues with respect to this. A number of stakeholders found the focus on family members who were residing together to be too rigid. It ignores circumstances such as intimate partner relationships where the parties have never resided together, and elder abuse, which can be very serious. Encompassed in much of this discussion is the limitation of the definition of individuals as having to have resided together, suggesting that this be revised.

A related issue is the narrow definition of family violence in the *PAFVA.* Emotional and financial abuse and harassment can have serious consequences for victims, and may lead to physical abuse in some cases. Such forms of abuse are covered by family violence protection legislation in several other provinces, and were recommended for inclusion in the *PAFVA* by the Alberta Law Reform Institute.

Further, the intent requirement is another aspect of Alberta's definition of family violence which may be problematic. In order to meet the definition, the respondent must act (or fail to act) with the *purpose of intimidating or harming a family member* (see s. 1(e) of the *PAFVA*). While s. 1(e) also includes reckless acts or omissions causing injury, property damage, or reasonable fear of either of these harms, this seems inconsistent with the purpose requirement in the same section. It is recommended that the purpose requirement be deleted from the definition of family violence.

> **Recommendation 10: The *PAFVA* should be amended to include intimate relationships where the parties have not resided together (s. 1(d)).**

Recommendation 11: The *PAFVA* should be amended to include emotional abuse, financial abuse and harassment (s. 1(e)).

Recommendation 12: The *PAFVA* should be amended to delete the words "the purpose of which is to intimidate or harm a family member" from the definition of family violence (s. 1(e)).

Another problem with definitions within the legislation was that of the need to constitute an emergency. This was deemed as one of the most contentious issues by JPs, the police and other key stakeholders. Whether circumstances such as the respondent being in police custody or the claimant residing in an emergency women's shelter preclude the granting of EPOs is subject to interpretation. It also counteracts the new-found practice of police officers layering orders to more adequately protect victims and their children.

One way to address this issue would be to create a clearer definition of when a situation is severe and urgent, or to provide clear case examples. The amendments to Manitoba's Act, not yet in force, do not define "emergency" as such, but more clearly describe the circumstances in which an EPO may be granted: where an order is necessary for the immediate or imminent protection of the subject, in circumstances where domestic violence/stalking has occurred, the subject believes it will continue and there is a reasonable likelihood that it will continue or resume.

Alternatively, the *PAFVA* might be amended to include a provision that certain circumstances do not negate the need for an emergency protection order, including the fact that the respondent has been detained pursuant to criminal charges, or the claimant is in an emergency shelter. Finally, this issue could be addressed through judicial education, as recommended below.

Recommendation 13: The *PAFVA* should be amended to provide examples of circumstances that do not preclude the granting of the order.

8.4 Protection Using QBPOs

The key stakeholders made a point of acknowledging the powers inherent in the provisions that it is possible to utilize in a QBPO. Interestingly though, relatively few of these are routinely utilized. Several of the provisions are contentious, primarily the possibility of ordering a claimant to receive counseling (the provision to mandate respondents to counselling is used, but not often). Shelter directors were the most vocal in suggesting that ordering the claimant to counselling constitutes blaming the victim. The only other interviewee that commented on this provision was a judge who noted that there may be merit in this provision but it has only been used five times. Given the contentious nature of this, and the lack of evidence of its utility, it should be deleted.

Similarly, although several stakeholders noted what were termed "frivolous" applications, there are other mechanisms to hold those who make false claimants accountable. It is not unreasonable to assume that the existence of a section in the *PAFVA* regarding frivolous and vexatious complaints may deter victims of family abuse from

making valid complaints under the *Act* for fear that their complaints might be construed as frivolous or vexatious.

> **Recommendation 14: The *PAFVA* should be amended to provide that only respondents can be ordered to receive counselling as a condition of protection orders (s. 4(2)(k)).**

> **Recommendation 15: The *PAFVA* should be amended to delete the reference to frivolous or vexatious complaints (see s. 13).**

8.5 Protection Using EPOs and QBPOs: Responding to Breaches

Criminal and civil remedies to address domestic violence are only viable if breaches are addressed swiftly and respondents held accountable. Past research on protection orders and the strong voices of the women claimants we interviewed showed this to be a significant problem. While the key stakeholders noted that breaches that result in physical violence may be dealt with, breaches using threats, and harassing to the point of stalking also need to be handled swiftly and with the support of not only the police but the judiciary. The mechanisms to hold respondents who breach accountable for their actions are primarily in place. They need to be utilized. Although the power to arrest respondents who breach protection orders is typically noted in the orders themselves, another suggestion is to explicitly state this power in the *PAFVA.*

> **Recommendation 16: The *PAFVA* should be amended to provide that the police have the authority to arrest respondents without warrant where there are reasonable and probable grounds to believe they violated the terms of a protection order under the Act.**

8.6 Training/ Education

Training and education were clear priorities when the *PAFVA* was introduced in 1999. A significant number of the police and child welfare interviewees were trained at that time and remember the training as useful. However, with changes in staffing and best practices developed to streamline the use of the legislation, training and education must continue to be available.

Cross-training, utilizing professionals with expertise in different facets of domestic violence is one method that is often productive. Another scenario is to utilize professionals that have championed the legislation and developed best practice to train and share their enthusiasm with other professionals in the same fields.

> **Recommendation 17: Training on the *PAFVA* should continue to be provided for police, other mandated agencies, shelter workers, and other claimants on a regular and ongoing basis. An on-going training model needs to be developed that addresses the high turnover rates in police and child-welfare workers. Police training should include a review of the benefits that the *PAFVA* might provide in addition to criminal charges.**

Recommendation 18: Education on the *PAFVA* should be provided for justices of the peace, Provincial Court judges, and justices of the Court of Queen's Bench on a regular and ongoing basis.

Recommendation 19: Create more public awareness and education about the *PAFVA* legislation both so that victims are aware of their options and so that the professionals that assist victims better understand the benefits and restrictions of the Act.

8.7 Summary of the Evaluation Outcomes

The applicability of the *PAFVA* evaluation results to the logic model developed by the *PAFVA* Evaluation Working Group is implicit in the previous sections and recommendations. This section highlights the outcomes with respect to Communication, Protection using EPOs, Protection using QBPOs and Training as they affect the primary targets: victims of violence that could ultimately become claimants for EPOs, the children that may or may not be included in a protection order, the perpetrators of violence and the community/system.

8.7.1 Communication

With respect to communication, the key question about immediate outcomes is to what extent victims, children, and perpetrators are knowledgeable and aware of legislative options and family violence. With only a limited number of interviews with applicants and none with respondents, we must rely on the key informant interviews to approximate this outcome. Across the justice and community interviews, the general consensus was that those immediately affected by family violence had little knowledge of EPOs as an option to address their safety needs.

A further question is whether utilizing the civil legislation assists in de-escalating violent incidents in the short term? This outcome can only be assessed through the perceptions of the four applicants and the justice and community key informants. While some perpetrators could not be trusted to obey the EPO's, the majority abided by the provisions, at least in terms of reported breaches. Finding an appropriate strategy to identify who can and cannot be trusted to obey the orders would not only make the respondents safer but would result in more appropriate police action against perpetrators that will not follow such constraints.

Once the key target groups, especially victims, have knowledge about civil remedies, do they utilize the legislation? This question is clearly tied to the first, in that without knowing about this option, the legislation will not be used extensively. The outcome that the numbers of EPO applications are increasing yearly suggests that knowledge of the civil legislation as an option is growing and that individuals are taking advantage of this strategy.

The utilization of EPOs in Alberta is similar to Saskatchewan that has legislation that parallels the Alberta model (personal communication, Rod McKendrick, Saskatchewan Justice) but substantially less than Manitoba (personal communication, Jane Ursel, RESOLVE Manitoba) in the 2002 calendar year. Manitoba's legislation, which has some unique characteristics, was applied for and granted at least three times as

often in 2002, suggesting that it is a model worthy of investigation if the *PAFVA* is reviewed.

Does knowledge of the civil legislation shift the attitudes of perpetrators from viewing violence as acceptable to non-acceptable? Do they see this as an opportunity to connect with treatment and to break the cycle of abuse? Without having the opportunity to interview respondents of the orders, these questions cannot be addressed. The interviews with the key community and justice stakeholders did not speak to whether or not these outcomes occur.

Are community members and workers aware and knowledgeable about the civil legislative options? The consensus across the key stakeholders is that, while some select groups are extremely knowledgeable about options and domestic violence, this remains a significant gap, which ultimately is a major barrier to utilizing the *PAFVA* legislation. Even the police and child welfare workers that are mandated to apply for orders on behalf of clients had mixed levels of knowledge, ranging from not knowing about the legislation at all, not seeing the potential benefits of using it to being quite knowledgeable and committed to its use.

Does utilizing the civil legislation prevent family violence from occurring in future? While a number of key stakeholders were dubious that the legislation can prevent violence occurring in future in the long-term, especially with respect to new partners, others commented that the majority of respondents obey the provisions.

Nevertheless, a number of the stakeholders consider that the legislation is one of a number of strategies that has raised the profile of the serious nature of domestic violence in their regions.

8.7.2 Protection Using EPOS

When EPOs are granted, do they provide safety and security to victims and their children during the initial seven day period before being reviewed at the Court of Queen's Bench? Several police officers commented that the majority of respondents do not breach the provisions of an EPO, meaning that most claimants and their children are safe. Notably though, several shelter directors had direct experience with women that had obtained an EPO but left their homes to go to emergency shelters because they did not feel safe. Without more interviews with claimants that were granted EPO's it is difficult to conclude that an immediate outcome of receiving an EPO is safety and security.

The narratives from the key stakeholders raised a number of concerns about individuals that were granted the order only to find that the provisions held little weight and the respondents were not held accountable for breaches. The key informants described about one-quarter to one-fifth of respondents as breaching the emergency protection orders, a cohort that remains of considerable concern, Gondolf (2002) has similarly identified 20% of those mandated to treatment by the criminal courts as re-assaulting victims early on in the process and not being amenable to intervention. These perpetrators are particularly dangerous and it will be important to develop mechanisms to identify them and to provide options other than EPOs for these victims.

Do EPOs assist perpetrators of violence in becoming more aware of their accountability, and does this subsequently interrupt the violence? Without having

interviewed the respondents, one cannot conclude that abiding by the order's provisions can be interpreted as suggesting that the perpetrators are more aware of their accountability for the violence. Nevertheless, for the partners and children of the respondents that abided by the EPO provisions, the violence is interrupted, and the children's exposure to domestic violence in the short term is prevented.

Finally, whether utilizing EPOs creates the immediate outcome of a decrease in family violence in the community is mostly true on a family by family basis, but is hard to determine in a broader sense.

8.7.3 Protection Using QBPOs

The third component of the logic model is the provision of QBPOs on review within seven days of granting an EPO. The majority of EPOs reviewed at Queen's Bench were granted or varied, a positive outcome. Do the provisions of the QBPO give victims and their children/youth better access to money and their residences than before this option was available? The court file review demonstrated that few of the possible provisions available as remedies are utilized, raising questions about the extent to which claimants are aware of these options.

The questions about outcomes related to QBPOs are identical to the ones already mentioned with respect to EPOs, such as do the victims of family violence feel safer and more secure with a QBPO in place and are children/youth less exposed to family violence? Again, with a limited number of claimants available to be interviewed it is difficult to answer these questions. Both women whose EPOs became QBPOs reported breaches, with few or only minimal consequences for their ex-partners from the judicial system.

Does the QBPO prevent future violence for that particular family? To what extent are they breached and what is the response of the criminal justice system to such breaches. This evaluation did not collect data about breaches directly; in fact, it would be difficult to do so. A number of the justice and community stakeholders raised questions about breaches. The police in rural and remote regions noted that they may not be able to adequately deal with breaches. Other stakeholders described the police as limiting their responses to only those breaches involving physical violence as compared to ones involving threats. Other stakeholders raised concerns about the judicial response to breaches, which they perceived as inadequate and reflecting a lack of understanding of the dynamics of intimate partner violence.

Does the QBPO assist perpetrators in accepting responsibility for their violent behaviour? This question was to have been addressed in the respondent interviews and since none came forward to provide their perspectives, we have no answer to this question at present.

Is there decreased family violence in the community as a result of the QBPOs being utilized? Again, this was difficult to determine based on the sources of information. Nevertheless, several justice informants are of the opinion that such orders are adhered to by many respondents.

8.7.4 Is the *PAFVA* Training Effective?

Outcomes for the fourth major component, training, were previously addressed in section 1.4.5. However this section will document the responses as related to the specific evaluation questions about training. Notable, there is some overlap with the previous sections related to the logic model.

Do the police, JPs and community agency representatives know about family violence and the provisions of the civil legislation and, in addition, do the police, child welfare workers and JPs apply the provisions of the legislation? The key informant interviewees clarified that, while many police and child-welfare workers know about family violence issues, understand the provisions of the legislation and can apply the provisions, about half prefer not to utilize the legislation. As such, they are not offering EPOs as an option when either criminal charges are not applicable or charges have been laid but the victim remains at risk from the perpetrator. Similarly a number of Justices of the Peace utilize the legislation appropriately but others do not seem to understand its value to victims of domestic violence.

Do community agency representatives provide services to victims of family violence including guidance on utilizing the legislation? While some of the key stakeholders from community agencies specific to domestic violence had a good grasp of the legislation, a number had very limited knowledge of it. Given their key contact with the large number of victims of domestic violence that never involve the police or child welfare, the mandated reporters, broadening or expanding the training to include these agency staff is recommended.

Do Justices of the Peace hear police and child welfare applications for EPOs and subsequently grant them? The court files review demonstrates that when JPs hear applications the majority are granted. However, it is likely that files are only created for appropriate applications, so we cannot determine how many cases were not heard by JPs and no file was opened. The key informant interviews suggest that there is variability among JPs as to their willingness to hear and grant applications. This raises the question of whether their training adequately makes the case to utilize the legislation.

Another outcome is that the police would deter offenders from committing additional acts of violence by attending to breaches of the orders. While there was no direct data to answer the question of whether this is the case, the interviews with the two claimants with EPOs and QBPOs and interviews with the key stakeholders suggested that this varies. Some police services are cognizant of the need to take any breaches seriously, others attended to only physical threats.

Two important potential outcomes of implementing the legislation are that protection orders prevent future domestic violence and that family violence is addressed more adequately. The evaluation did not allow the opportunity to address these questions directly, but rather through the perspectives of the key justice and community stakeholders. As might be expected, the response to this query was mixed. Some stakeholders did not perceive the orders as preventative for two reasons: the claimant and respondent often reconcile and violence may reoccur and the respondent may breach the order.

However, a larger group was more optimistic that the orders can make a long-term difference for at least some individuals. The fact that the violence is brought into the public domain and that the protection order provides a period for reflection for the couple are both seen as potentially impacting some to stop their abusive behaviours.

8.8 Conclusion

To conclude, the results of this summative evaluation support the effectiveness of the *PAFVA* legislation in principle, but suggest that the afore-mentioned recommendations for revisions be considered to address several noted challenges. Two groups that remain of concern are those that attempt to but cannot access protection orders and those that are granted orders, but the respondent breaches the conditions. Protection orders are only as good as the extent to which breaches are addressed. The concern that civil and criminal orders can provide false hope for protection has been raised across North America.

Despite these important caveats, in general, the *PAFVA* legislation is perceived as having the potential to address the needs of a significant group of victims of violence: those where criminal charges are not applicable. Further, their application in conjunction with the police laying criminal charges when appropriate is considered an exceptional strategy to better protect victims and their children from violent partners.

With attention to the further concerns and recommendations for revisions to the *PAFVA* legislation that have arisen from the voices of the key stakeholders the legislation can become more effective. The stakeholders graciously took time to outline their perceptions of what is working well, what remains a challenge and what are the gaps with respect to the *PAVFA* in the hope that their perceptions and suggestions would improve the legislation to ultimately protect the majority of victims.

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Appendix 1: Comparison of Provincial Civil Legislation

	Alberta ***Protection Against Family Violence Act***	Saskatchewan ***Victims of Domestic Violence Act***	Manitoba ***The Domestic Violence and Stalking Prevention, Protection and Compensation Act***
Implementation Date:	June 1, 1999	February 1, 1995	September 30, 1999
Who is Protected by Act:	A **family member** is defined as: - married, common-law, or separated intimate partners - amended in 2003 by *Adult Interdependent Relationships Act* to include adult interdependent partners (including those in same sex relationships) - people who are the parents of one or more children (regardless of marital status or if they have lived together) - persons who reside together and are related by blood, marriage or adoption - children in the care and custody of those persons listed above - persons who reside together where one person has legal care and custody over the other - excludes non-family caregivers - excludes foster children and dating relationships	**Cohabitants** mean: - persons who have resided together or who are residing together in a family relationship, spousal relationship, or intimate relationship - persons who are the parents of one or more children, regardless of marital status or whether they have lived together - includes same sex relationships	**Cohabitants** mean: - persons who reside together or have resided together in a family, spousal, or intimate relationship - persons who are the biological or adoptive parents of a child, regardless of marital status or whether they have lived together - includes same sex relationships - applies to “persons” in the case of stalking

Definition of Family or Domestic Violence and Stalking:	Family violence is defined as including: - any intentional or reckless act or omission that causes injury or property damage, the purpose of which is to intimidate or harm a family member - any act or threatened act that causes a reasonable fear of injury or property damage, the purpose of which is to intimidate or harm a family member - forced confinement - sexual abuse (defined as sexual contact that is coerced by force / threat of force) - DOES NOT EXPLICITLY INCLUDE EMOTIONAL OR FINANCIAL ABUSE - DOES NOT INCLUDE PHYSICAL DISCIPLINE OF A CHILD BY PARENT AS LONG AS THE FORCE IS REASONABLE	Domestic Violence means: - any intentional or reckless act or omission that causes bodily harm or damage to property - any act or threatened act that causes a reasonable fear of bodily harm or damage to property - forced confinement - sexual abuse (not defined) - DOES NOT INCLUDE EMOTIONAL OR FINANCIAL ABUSE	Domestic violence occurs when a person is subjected by a cohabitant of the person to: - an intentional, reckless or threatened act or omission that causes bodily harm or damage to property - an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property - conduct that reasonably constitutes psychological or emotional abuse - forced confinement - sexual abuse (not defined) Stalking occurs when a person harasses by repeatedly engages in conduct that causes the other person reasonably to fear for his or her own safety - examples of conduct include: - Following from place to place the other person or anyone known to the other person - Communicating directly or indirectly with the other person or anyone known to the other person - Besetting or watching any place where the other person or anyone known to the other person resides, works, carries on business, or happens to be - Engaging in threatening conduct directed at the other person or anyone known to the person

Emergency Orders (JPs, Provincial Court Judges):	Emergency Protection Order (EPO)	Emergency Intervention Order (EIO)	Protection Order
Non-Emergency Orders (QB Judges):	Queen's Bench Order (QBO)	Victim's Assistance Order (VAO)	Prevention Order
Other Components in Act:	Warrant Permitting Entry	Warrant Permitting Entry	Tort of Stalking
Application Method:	-no notice to respondent required for EPO - by telecommunication / in person (EPOs) - by originating notice of motion (QBPOs)	- in person (with assistance of police, Victim Services Coordinator, Mobile Crisis Worker or Community Case worker under the Tripartite Aboriginal Policing Agreement) E.IO. - by telecommunication (EIO)	- in-person (on own or with assistance of lawyer or peace officer) - By telecommunication (with assistance of lawyer or peace officer)
Expiry Date:	- EPOs and QBPOs may not exceed 1 year unless extended	- EIOs and VAOs expire on the date specified on the order by the Justice.	None
Review Period:	7 days (EPOs)	3 working days (EIOs)	No automatic review period, see "appeals" process below
Appeals Period:	no provisions in Act	- made to the Court of Appeal	- Protection Order: can apply to have it set aside within 20 days of service - Prevention Order: can appeal within 30 days of when order was made

Appendix Two: Interview Schedule for Police/Child Welfare Workers

Introduction: RESOLVE Alberta has been contracted by the Alberta Office for the Prevention of Family Violence to conduct an evaluation of the Protection Against Family Violence (PAFVA) legislation. We are contacting representatives of the justice system across Alberta (police, JP's, court administrators, judges, child welfare workers and other community representatives) to ask about your experiences with and perceptions of the effectiveness of the Protection against Family Violence (PAFVA) legislation and other related options in your communities.

1. How often in the past two years have you assisted someone in making an application under the PAFVA legislation?
   - If you have not used the legislation – why not?
2. Have you directed someone to another route to obtaining a protection order (such as through Court of Queen's bench). If so, why did you consider this preferable?
3. Are there other options that you consider preferable to EPOs/QB protection orders (i.e. restraining orders)? If so, what are these and why do you consider them preferable?
4. How easy/difficult is the application process?
   - Would you change anything about the application process?
5. How easy/difficult is it to serve the respondent with the EPO as required by the legislations? Under what circumstances is this difficult?
6. Have you dealt with situations in which the current legislation was not applicable but *you thought it should be*? Please describe.
   - Have you dealt with situations in which you thought the legislation shouldn't be applicable, *but it was*? Please describe.
7. Were there times when you suggested applying for an order and the potential claimant declined?
   - If yes, what were their reasons for not proceeding?
8. In situations when using an emergency protection order was a possibility, did you have other options that you considered using or did use (such as laying charges)?
   - Were there other options (such as release conditions) that would achieve the desired outcome?
9. Once the EPO has been reviewed, do you assist the claimant with service of the order? Do any other agencies/services help with this?
10. What do you see as the major differences between the civil and criminal legislation options?
11. Did the emergency protection orders/Queen's Bench Protection Orders work as you anticipated to protect the safety of the victim/s and their property rights?
    - If yes, what worked well?
    - If not, what was not effective?
12. Without giving any identifying information, can you describe a situation when the EPO/QBPO was particularly helpful?
13. Without giving any identifying information, can you describe a situation when

the EPO/QBO was NOT particularly helpful (i.e. the conditions were breached, or there were conflicting orders such as custody and access?)?

14. Did the JP hear your application(s)?
    - If denied, what were the reasons(s)? Was the attempt and the reasons for refusal to hear the application recorded? If yes, where?
15. Did the JP grant the EPO application(s)? If not, what were the reasons?
    - Do any claimants have particular difficulty with this part of the process?
16. Did you have any difficulties applying the conditions of the order? (i.e. escorting the respondent from their home?). If so, please describe.
17. Did the claimant take the EPO forward for review in QB? If not, why not?
18. When the order(s) was/were reviewed in Queen's Bench court, was it/were they granted?
    - What is working well with respect to this process?
    - Are there any common difficulties?
    - Do some claimants have particular difficulty with this part of the process? If so, what are they?
    - Is the length of the order(s) generally sufficient? Explain.
19. Have you been called upon to or heard of others dealing with breaches of the emergency protection orders? QB protection orders?
    - If so what has happened?
    - What has been effective in protecting victims after breaches occurred?
20. What training, if any, did you receive about the PAFVA legislation and when were you trained?
    - Did the training cover what you needed to know to implement the legislation?
    - What changes or additions to the training would you suggest, if any?
21. In general, what is working well with respect to the EPO/QBO process?
    - Are there any common difficulties?
    - In your opinion, are PAFVA emergency protection orders useful tools in protecting the property and/or safety of victims of domestic violence and their children? Please explain why or why not.
22. In your opinion, when PAFVA emergency protection orders/QBO are granted, do they prevent future violence for that family? Please explain why or why not.
23. Do you have anything more to add about EPOs/QBPOs?

Appendix Three: Interview Schedule for JP's & Judges

1. When you receive or review applications for emergency protection orders or QB protection orders under the Alberta PAFVA legislation, how is the process working?
    - Are any problematic? If so, what are the most typical problems?
    - Have you found it difficult to determine whether the situation constituted an "emergency"? If so, what did you decide?
2. Would you change anything about the application/review process?
3. Have there been applications that you received but decided not to hear? If so, for what reason(s)?
4. Have you dealt with situations in which the current legislation was not applicable, but you thought it should be?
    - When you thought it shouldn't be, but it was? Please describe.
5. If you do not hear applications/grant EPOs or QB protection orders are there other options that you find as useful?
    - Do you hear other applications that address similar issues? If so, what seems to work best, in your opinion?
6. Have you dealt with any situations in which EPOs or QB protection orders impacted other court orders (such as custody and access orders)? If so, please describe the overlap and what you decided.
7. Have you been called upon to deal with breaches of the emergency protection orders /QB protection orders? If so what have you done?
    - Has this been effective in protecting victims?
8. What education if any, did you receive about the PAFVA legislation and when did you receive the education?
        - Did the education cover what you needed to know to implement the legislation?
        - What changes or additions to the educations would you suggest, if any?
9. In your opinion, are PAFVA emergency protection orders and QB protection orders useful tools in protecting the civil rights and safety of victims of domestic violence and their children? Please explain why or why not.
10. In your opinion, when PAFVA emergency protection orders and QB protection orders are granted, do they prevent future violence for that family? Please explain why or why not.
11. Do you have anything more to add about EPOs or QB protection orders?

Appendix Four: Key Justice/Community Interview Guide
(including Victim's Services Representatives & Court Administrators)

1. What do you believe is the intent of the PAFVA Legislation?
2. In general, is the PAFVA legislation being used as anticipated?
    - If yes, in what ways; if not, why not?
    - If not being utilized as much as anticipated, why do you think this is so?
3. How accessible are the orders?
    - How could they be made more accessible?
4. What do you see as the differences between using the PAFVA legislation and other options such as restraining orders, or conditions of release?
    - What does this legislation add to these options?
5. In your experience, are breaches appropriately handled?
    - If handled appropriately, what typically happens?
    - If not, what could improve the way breaches are handled?
6. How often do claimants get legal council for the EPO review? Are there services in your community to assist them to get council?
7. Should other community/justice representatives be designated persons under the Act to apply for emergency protection orders? If anyone, who? If not, why not?
8. What training or information did your service and staff receive with respect to the civil legislation?
9. Was this training/information adequate?
10. What more would have been helpful?
11. Can you suggest any improvements/changes to this legislation? In general, how would you compare the performance of the justice system before and after the introduction of the civil legislation?
12. Are there currently any contentious issues that impact an individual's access to emergency protection orders/ QBOs?
    - i.e. are there populations that do not have access or whose access might be limited (immigrant, Aboriginal; children, gay & lesbian, the elderly)
    - types of family violence not addressed
13. Are there best practices or special justice programs or policies that you would like to see adopted in a revised PAFVA legislation?
14. In your opinion, are PAFVA emergency protection orders/QBPOs useful tools in protecting the civil rights and safety of victims of domestic violence and their children? Please explain why or why not.
15. In your opinion, when PAFVA emergency protection orders/QBPOs are granted, do they prevent **future violence** for that family? Please explain why or why not.
16. Do you have anything more to add about EPOs/QBPOs?