

**Ministry of Attorney General  
Justice Services Branch  
Civil and Family Law Policy Office**

**Family Relations Act Review**

**Chapter 9**

**Family Violence**

**Discussion Paper**

**Prepared by the Civil and Family Law Policy  
Office**

**April 2007**

This paper is one of several discussion papers developed for the review of the *Family Relations Act*. The paper does not reflect a position or decision of government and is intended to generate discussion and feedback. The discussion paper is not intended to constitute legal advice. Any description of the *Family Relations Act* or other laws is provided solely for the purposes of the discussion paper and should not be relied on as legal advice or a statement of the law for any other purpose. Individuals with questions regarding the legal effect of provisions of the *Family Relations Act* or other laws should seek legal advice from a lawyer.

**TABLE OF CONTENTS**

**SETTING THE SCENE..... 1**  
    *The Report of the Family Justice Reform Working Group..... 1*  
    *Organization of This Paper ..... 2*

**DISCUSSION.....2**

    PART A – THRESHOLD QUESTIONS ABOUT FAMILY VIOLENCE ..... 2  
        *Discussion Point (1) – Defining Family Violence ..... 2*  
        *Discussion Point (2) – False Allegations ..... 4*

    PART B – THE IMPACT OF FAMILY VIOLENCE..... 4  
        *Discussion Point (3) – Orders to Ensure Safety..... 4*  
        *Discussion Point (4) – Family Violence & Arrangements Involving Children..... 8*  
        *Discussion Point (5) – Family Violence & Collaborative Decision-Making ..... 10*

    PART C – GENERAL FEEDBACK ..... 11

**ENDNOTES ..... 12**

**SETTING THE SCENE**

Violence is an issue for some families in B.C. Both men and women report having experienced family violence, although the nature and consequences are typically more severe for women.<sup>1</sup>

Children are also profoundly affected by direct or indirect exposure to family violence. Children who live in a home marred by family violence are at greater risk of physical harm, whether the violence is directed at them specifically, or whether they get caught accidentally in “cross-fire violence” (for example, getting hit by a stray punch intended for the parent). The overlap between spousal abuse and child abuse is in the order of 30-60%.<sup>2</sup> Children exposed to violence are also at greater risk of psychological harm, including increased incidence of aggression, hyperactivity, anxiety, depression, or behavioural problems.<sup>3</sup> Sometimes, patterns of violence can repeat from generation to generation.<sup>4</sup>

Family violence does not necessarily stop when a relationship ends. In fact, a family breakup may mark the beginning, or the escalation of violence.<sup>5</sup>

Since the early 1990s, researchers have developed a deeper understanding of the different patterns of violence experienced in families. This research recognizes that not all family violence is the same, and places it along a continuum.<sup>6</sup> LaViolette’s Continuum of Aggression and Abuse from 2005, for instance, has five categories of violence, from “common couple aggression” at one end to “terrorism/stalking” at the other.<sup>7</sup> A spouse with no previous history of violence who throws a book at the other upon being told of an affair and the end of the marriage poses a different risk than one who stalks a former spouse and kills or tortures that person’s pets.

Taking account of the differences in types of family violence may help those working in the family justice system to make more accurate assessments of future risk and could guide the development and implementation of social and legal responses tailored to particular situations and differing risks of future violence.<sup>8</sup>

On the other hand, some question whether including violence in family legislation will have unintended consequences, such as intensifying the degree of conflict between the former spouses or becoming the focal point of all decision-making regardless of the circumstances or future risk.

**The *Family Relations Act* Review &  
The 2005 Report of the Family Justice Reform Working Group**

In 2005, the Family Justice Reform Working Group published a report to the B.C. Justice Review Task Force. The report, entitled *A New Justice System for Families and Children* and available at [http://www.bcjusticereview.org/working\\_groups/family\\_justice/final\\_05\\_05.pdf](http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf), suggested a comprehensive set of reforms to B.C.’s family justice system. Family violence was addressed throughout the report. To summarize the Working Group’s main points on this subject:

- Separation is a high risk time for family violence.<sup>9</sup>
- Safety of family members must be the number one priority for the family justice system.<sup>10</sup>
- Early screening for family violence issues is critical. The report suggested that when families approach a Family Justice Information Hub (now called a Family Justice Services Centre)—the “front door” of the family justice system—staff complete an assessment of the needs of the family, including identifying any safety issues.<sup>11</sup>
- Information about family violence would be available from Hubs (Family Justice Services Centres) as would referrals to community agencies and resources that could help victims of abuse.<sup>12</sup>

- The Working Group recommended that families be required to attend one mediation session (or other collaborative dispute resolution session) for cases involving support, custody, access, guardianship, or property division, before being permitted access to court.<sup>13</sup> However, urgent matters such as applications for restraining orders would be automatically exempted from mandatory mediation.<sup>14</sup> Other cases involving violence could also be exempted from the requirement to try consensual dispute resolution if, for example, a family member would likely come to harm as a result of participating, or if the imbalance in bargaining power could not be managed to make the mediation procedurally fair.<sup>15</sup> The report recognized that there will always be some cases for which negotiation through lawyers, or a trial, will be appropriate.<sup>16</sup>
- The report did not recommend that cases involving allegations of violence be automatically exempted from consensual dispute resolution. The Working Group identified some options that could be appropriate, in some circumstances, even if violence has been an issue. These include: shuttle mediation (mediation where parties do not meet face-to-face), the use of support people, impasse mediation (a combination of mediation and therapy), and collaborative law, where an interdisciplinary team of family lawyers and mental health experts and possibly other professionals help parties to reach an out-of-court agreement.<sup>17</sup>
- It recommended that training about family violence be provided to judges hearing family cases, to lawyers and law students, and to mediators.<sup>18</sup>
- It also recommended that family violence, including its impact on the safety of children and other family members, be included in the list of factors that judges must consider when assessing the best interests of the child, in making decisions about custody, access and guardianship.<sup>19</sup>

The Family Justice Reform Working Group took a broad view of the family justice system, looking particularly at policies, programs and services. Although this paper on family violence draws upon that work, its focus is on law reform. As part of the Province's review of the *Family Relations Act*,<sup>20</sup> it considers family violence as it intersects with other family law issues.

### Organization of This Paper

The paper is divided into three parts. The first part discusses threshold policy issues, such as how or whether to define family violence, and how to deal with false allegations of violence. The second part looks at how the presence of violence intersects with other family law issues, such as who is permitted to stay in the family home immediately after the separation, protection orders, decisions about children, and collaborative decision-making. The final section of the paper provides you with an opportunity to highlight what you feel are the most pressing issues, and identify issues not covered in the paper that you think should be considered. Once you have read the paper, use the feedback form to send us your responses. The feedback form includes all of the questions posed in this paper.

If you wish to see any of the laws in this paper please refer to the following link to [Legislation](#).

## DISCUSSION

### PART A – THRESHOLD QUESTIONS ABOUT FAMILY VIOLENCE

#### *Discussion Point (1) – Defining Family Violence*

Several Canadian family laws include violence as a factor to be considered by judges in determining children's best interests in custody, access or guardianship disputes. (The factors that a judge in B.C. must consider when determining a child's best interests, for the purposes of a decision about custody, access, or guardianship, are discussed in Chapter 6). Even where

violence is not a specific factor in the best interests test listed in a family statute, there are cases where judges have considered it when making decisions involving children.<sup>21</sup>

Where violence is included in a family law, it is not always defined. In this paper, when we refer to family violence, we are speaking about violence committed by adult members of the family. Children may be the direct targets of violence, or they may be indirect victims of violence directed at another family member, whether they inadvertently get in the “cross-fire” of violence between their parents (for example, they get struck when one parent tries to punch the other), whether they witness family violence, hear it, or simply know about it.

In Canadian family laws, only Alberta’s recently updated *Family Law Act* (effective November 1, 2005) includes a definition of family violence.<sup>22</sup> Alberta’s definition is similar to the definition of violence found in an earlier federal bill, Bill C-22 (2002), which would have amended the *Divorce Act* had it not died on the order paper in 2004.<sup>23</sup>

This paper considers definitions in family laws and family violence laws across Canada. It also refers to B.C.’s *Violence Against Women in Relationships Policy*, a policy that describes how the criminal justice system should respond to relationship violence and applies to women, children, men, and same-sex couples who have experienced violence.<sup>24</sup> Definitions of violence usually cover physical abuse, including forcible confinement,<sup>25</sup> and sexual abuse, or sexual assault.<sup>26</sup> Fewer definitions include psychological or emotional abuse.<sup>27</sup> Some include neglect, such as depriving a person of food or clothing or other basic necessities, and financial abuse.<sup>28</sup> Threats of violence are included in the definition of violence in civil laws aimed at protecting against family violence in other parts of Canada, as well as in B.C.’s *Violence Against Women in Relationships Policy*.<sup>29</sup> Alberta’s *Family Law Act* and the federal government’s Bill C-22 (2002) also include attempted violence.<sup>30</sup>

Some laws that define violence go further and say what is *not* violence. Alberta’s *Family Law Act*, which follows Bill C-22 (2002), excludes “acts of self-protection or protection of another person” from its definition of violence.<sup>31</sup> Similarly, s. 24(5) of Ontario’s *Children’s Law Reform Act*, brought into force on February 23, 2006, says that “anything done in self-defence or to protect another person” is not to be considered violence or abuse.<sup>32</sup> A self-defence exception is also found in several civil family violence laws.<sup>33</sup>

**QUESTIONS**

1. Should the *Family Relations Act* define family violence? Why or why not?
2. If so, check below, all the elements that you think should be covered in a definition of violence:

Form of Violence	Actual	Attempted	Threatened
physical abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
forcible confinement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
sexual abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
psychological or emotional abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
neglect	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
financial abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Should a definition of violence exclude acts of self-protection or protection of others?

***Discussion Point (2) – False Allegations***

At the hearings of the Canadian Special Joint Committee on Custody and Access in 1998, representatives from men’s groups across Canada testified that some parents make false allegations of child abuse against the other parent to try to keep that parent from spending time with the children. Some British Columbians also raised false claims of abuse as a concern in the 2001 federal-provincial-territorial consultations on custody, access and child support.

In its final report, *For the Sake of the Children*, the Special Joint Committee recommended that the federal government assess the adequacy of the *Criminal Code* to deal with intentional false claims of abuse, and develop policies for taking action on clear cases of mischief, obstruction of justice or perjury.<sup>34</sup> The final report from the 2001 federal-provincial-territorial consultations, *Putting Children First*, published in November 2002, made no recommendation about false allegations, citing research from law professor Nicholas Bala that suggested deliberately false claims are few.<sup>35</sup> According to Professor Bala’s research, most false claims result from misunderstandings, not deliberate lying.<sup>36</sup>

In addition to criminal penalties, another possibility available to a falsely accused parent is to bring an application for a finding of contempt of court.<sup>37</sup> A parent who is denied access by the other parent who says the child is being abused during access visits could ask a judge to find the parent who is withholding access in contempt of court for violating the access order. If there is no proof that the access parent has been violent, or if access denial continues in the face of expert reports or assessments that find there has been no abuse, a judge may use his or her contempt powers to punish the parent who made the false allegations, by ordering a fine or imprisonment or both.

A falsely accused parent could also use the civil justice system to seek damages based on defamation,<sup>38</sup> negligence,<sup>39</sup> infliction of mental suffering or malicious prosecution<sup>40 41</sup>.

A judge hearing a family case may also address false allegations through a costs order (an order that one parent pay a portion of the legal costs of the other).<sup>42</sup> In Australia, a judge who is satisfied that a person “knowingly made a false allegation or statement” is required to order that person pay some or all of the other party’s costs, under s. 117AB of the *Family Law Act, 1975*.<sup>43</sup>

**QUESTIONS**

4. Are existing criminal and civil penalties adequate to address false allegations of violence or abuse raised in family law cases?
5. If not, should the *Family Relations Act* deal with false allegations? How?

**PART B – THE IMPACT OF FAMILY VIOLENCE**

***Discussion Point (3) – Orders to Ensure Safety***

Peace bonds and restraining orders are both protection orders; that is, orders made by a judge to protect one person from another. Peace bonds are made in criminal court under s. 810 of the *Criminal Code*.<sup>44</sup> The police apply for a peace bond on a person’s behalf, and a prosecutor, a government lawyer, handles the case in court. Restraining orders are made in civil (family) court under the *Family Relations Act*. A person may either apply for a restraining order on his or her own, or get a lawyer to do it.<sup>45</sup>

Both forms of protection order provide some similar safeguards—they can both prohibit or limit contact with a person—but there are some differences. A peace bond can provide protection from anyone, while a family connection is generally needed for a restraining order under the *Family*

*Relations Act*. The burden of proof for restraining orders is less stringent than for peace bonds. Under the *Family Relations Act*, if a judge considers it more likely than not that the evidence supports a need for a restraining order, it will be issued. Peace bonds require proof beyond a reasonable doubt. This discussion focuses on orders available under the *Family Relations Act*.

Broadly speaking, there are three types of orders judges may make under the *Family Relations Act* that can help to protect the safety and security of family members. Two are restraining orders; either to prevent harassment (s. 37), or to prohibit contact (s. 38, s. 126). The third is an order for temporary exclusive occupancy of the family home (s. 124), which judges sometimes use as a way to keep family members safe.

#### **Preventing Harassment and Prohibiting Contact**

Under s. 37, a judge may make an order to prevent a person from molesting, annoying, harassing or communicating with another person or a child in that person's custody, or attempting to do any of those things.<sup>46</sup> Although s. 37 does not say that only a parent or guardian may apply, there has been litigation over whether these orders are available to people who are not also making a claim under the *Family Relations Act* for child custody, access or guardianship.<sup>47</sup> Other questions are whether the section applies to other kinds of relationships (dating, for example); or where violence is directed at a spouse, rather than at a child. It has been argued that it does not,<sup>48</sup> which is at odds with the growing body of research on the harm that spousal violence causes children. Studies on family violence suggest that being exposed to spousal violence is harmful to children, whether they see it, hear it, or experience its aftermath.<sup>49</sup>

Under s. 38, a judge may make an order prohibiting a person from entering a place where a child resides, and prohibiting that person from contacting or trying to contact the child or a person who has custody of or access to the child.<sup>50</sup> An order under s. 38 may be made only if the judge makes a custody order for the child, or there is already a custody order or a separation agreement filed with the court.

Restraining orders under ss. 37 and 38 can be made with or without notice to the other person. Without notice orders can be granted in cases of urgency, including where the location of the other person is unknown or if the fact of giving notice itself may lead to violence.

Orders made under ss. 37 and 38 authorize the police to arrest the other person if he or she violates the terms of the restraining order. To facilitate the enforcement of restraining orders, each court registry in B.C. sends a copy of the restraining order to a central restraining order registry, which the police can access.

Both ss. 37 and 38 allow a judge to require the person named in the order to put up money that will be forfeited if the person fails to obey the order, or to require the person to report to a designated person for a period of time set by the judge. In addition, under s. 38, a judge may require the person to deposit documents, such as a passport, with a designated person, or transfer specific property to a trustee on specified terms and conditions. An order to transfer property may only be made by a Supreme Court judge.

Section 126 allows a judge to make an order prohibiting one person from entering a place occupied by another person or a child in that person's custody.<sup>51</sup> This is similar to one of the orders available under s. 38, but s. 126 applies only to separated spouses, regardless of whether or not they have children.

#### **Temporary Exclusive Occupancy of the Family Home**

When spouses break up, problems can arise if both of them want to continue to stay in the family home. Family violence is not necessarily a factor in these disputes, but resolving a disagreement over who is to live in the home is especially pressing if one spouse has been violent toward the

other, or to the children. In certain circumstances, under s. 124, a judge can allow one spouse and any children to live temporarily in the family home without the other spouse. This is called "exclusive occupancy." An exclusive occupancy order is available only in Supreme Court; it cannot be made in Provincial Court.

The *Family Relations Act* does not specify what a judge should consider in making a decision about exclusive occupancy. However, case law has established that the spouse who wants such an order must show that sharing the home with the other spouse is a practical impossibility.<sup>52</sup> Violent conduct by the other spouse may show the required practical impossibility.

In some provinces and territories, family laws specify what a judge must consider when making the decision to let one spouse have exclusive occupancy of the family home. Violence is listed as one of the factors.<sup>53</sup>

An exclusive occupancy order may not be very effective to protect against future family violence. Where there is a risk of future violence, a spouse may ask for an order under s. 126 prohibiting contact, and an exclusive occupancy order under s. 124 at the same time, for a greater measure of protection. The combined orders are meant to ensure that the family home is safe, but they do not address what happens outside of the home.

#### Elsewhere in Canada

As in B.C., judges in other parts of Canada may grant peace bonds under s. 810 of the *Criminal Code*. As well, many family laws in other provinces and territories allow judges to make restraining orders.<sup>54</sup> Unlike B.C., most of these provinces and territories also have a separate civil (non-criminal) law that covers family violence.<sup>55</sup> These laws vary from place to place, but they often cover a wider range of family relationships than the *Family Relations Act*. As one example, Alberta's family violence law covers:

- people who are, or have been, married to one another;
- people who are, or have been, adult interdependent partners;
- people who live, or have lived, together in an intimate relationship;
- parents, regardless of whether they ever married or lived together;
- people who live together and are related to one or more of the people in the household;
- children in the care and custody of any of the above mentioned people; and
- people who live together where one has care and custody of the other under a court order.<sup>56</sup>

Almost all family violence laws contain some form of temporary emergency orders<sup>57</sup> and a simplified process for obtaining such an order. For example, some laws allow an application to be made by phone, fax, or even e-mail.<sup>58</sup> They often allow a person other than the victim, such as a police officer, a victim services worker, or a lawyer, to apply for the emergency order.<sup>59</sup> Some of these laws allow for other types of orders as well.<sup>60</sup>

The following are the kinds of orders that judges may make under the various family violence laws in Canada:

- restraining the respondent from committing (further) family violence;<sup>61</sup>
- directing the seizure of personal property of the respondent that was used in furtherance of violence or stalking;<sup>62</sup>
- granting the victim (and other family members) exclusive occupation of a residence;<sup>63</sup>

- requiring the respondent to make the rent or mortgage payments for a residence;<sup>64</sup>
- restraining the respondent from terminating a residence's basic utilities;<sup>65</sup>
- directing a peace officer to remove the respondent from a residence;<sup>66</sup>
- directing a peace officer to accompany a person to a residence to supervise the removal of personal belongings;<sup>67</sup>
- restraining the respondent from communicating with or contacting the victim and others or from making any communication likely to cause the victim annoyance or alarm, including contact with that person's, or other family members' employers, employees or co-workers;<sup>68</sup>
- restraining the respondent from attending at or entering into a place regularly attended by the victim, such as a residence, or place of employment;<sup>69</sup>
- restraining the respondent from following the victim or other person from place to place;<sup>70</sup>
- directing the delivery or seizure of weapons (and of related documents, such as permits);<sup>71</sup>
- requiring the respondent to reimburse the victim for monetary losses suffered by that person, that person's child or any child in the custody of that person as a result of the family violence, such as lost wages; medical, dental or legal costs; or moving expenses;<sup>72</sup>
- granting the victim (or respondent) temporary possession over specific personal property, such as a car, utilities accounts, or a cheque book;<sup>73</sup>
- restraining the respondent (or victim) from taking, converting, damaging or otherwise dealing with property in which the other person may have an interest;<sup>74</sup>
- requiring the respondent to post a bond or cash deposit;<sup>75</sup>
- recommending or requiring counselling for the respondent (and any other family member);<sup>76</sup>
- prohibiting the publication of identifying information about the victim (or a child), such as a name, or an address;<sup>77</sup>
- awarding temporary care and custody of any children to the victim or to another person;<sup>78</sup>
- providing for access to children on terms for the judge to decide, giving "paramount consideration to the safety and well-being of the victim and the children;"<sup>79</sup> and
- any other provision the court thinks necessary or appropriate.<sup>80</sup>

### Summary

The *Family Relations Act* does not have a simplified procedure for obtaining a restraining order without the need to go to court, as family violence laws elsewhere in Canada do. Nor does that *Act* permit police officers or others to apply for protection orders on behalf of those at risk of family violence. Finally, the various interpretations judges have given the restraining order provisions in the *Family Relations Act*, as well as their overlapping nature, may complicate their use.

Some of the types of orders available under those other family violence laws are also specifically authorized under the *Family Relations Act*. And all of these orders, including those not specifically mentioned in the *Family Relations Act*, could be made by Supreme Court judges. However, Provincial Court judges can only make orders that are specifically referred to in the *Family Relations Act*, and they cannot make orders for exclusive occupancy of the family home.

### **QUESTIONS**

6. Should s. 124 of the *Family Relations Act* include specific factors, such as violence, to guide a judge's decision about making orders for temporary exclusive occupancy of the family home? Why or why not?
7. Should the *Family Relations Act* be amended to make it clear that family members, such as former spouses, may bring applications for restraining orders, even if they are not applying for anything else under the *Family Relations Act*?
8. Should restraining orders under the *Family Relations Act*, which could help to prevent violence, be available to anyone in a domestic or family relationship, including people who are dating or those who are living together as a couple but who do not meet the legal definition of "spouse"?
9. Do the existing restraining orders available under the *Family Relations Act* adequately address violence against spouses? against children? If not, what kinds of relief would you suggest be added to the *Family Relations Act*?
10. Do you have any other suggestions as to how restraining orders under the *Family Relations Act* can be structured so as to best ensure the safety of family members in the face of family violence?

### **Discussion Point (4) – Family Violence & Arrangements Involving Children**

#### **Violence as a Factor in the Best Interests of the Child Test**

Although B.C. does not include family violence as a factor that judges must consider when determining the best interests of a child, in making a decision about custody, access or guardianship, a number of other places do.<sup>81</sup> Please refer to Chapter 6 Parenting Apart for a discussion of this issue.

#### **Legislative Presumptions**

Some laws go further than just including family violence as a factor to be considered, and give directions as to how it should be taken into account. Some family laws limit the role of a violent parent in the child's life, unless that parent can prove that such a limit is not in their child's best interests.

For example, Arizona's law says that "there is a rebuttable presumption that an award of custody to the parent who committed the act of domestic violence is contrary to the child's best interests."<sup>82</sup> It forbids orders for joint custody if the judge finds there has been significant domestic violence, or a significant history of it.<sup>83</sup> Arizona's law also describes what should happen with respect to parenting time (access). The parent found to have been violent "has the burden of proving to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development."<sup>84</sup> Even if the parent meets that burden, the judge must put conditions on parenting time "that best protect the child and the other parent from further harm."<sup>85</sup> Possible conditions include supervised exchange, supervised access, a requirement to attend and complete a violence treatment program, bonds, and a ban on overnight visits.<sup>86</sup>

Louisiana's law also creates a legal presumption against an order for sole or joint custody to a parent with a "history of perpetrating family violence."<sup>87</sup> Like Arizona's statute, Louisiana's law also sets out presumptions regarding access; however, it distinguishes between sexual violence and other forms of violence:

- If a parent has been violent, a judge can order only supervised contact. If the violent parent completes a treatment program, is not abusing alcohol or drugs, poses no danger to the child, and it is in the child's best interests, the judge can later change the order to unsupervised contact.
- If a parent has sexually abused a child, the judge cannot make any contact order. If the abusive parent completes a treatment program, and it is in the child's best interests, the judge may then order supervised contact.<sup>88</sup>

California's *Family Code* contains a general statement that exposure to violence harms children, and presumes that giving custody to a parent who has been violent is harmful to the child's best interest. The parent who has been found to be violent can only overcome this presumption by proving that it is in the child's best interest for that parent to have custody.<sup>89</sup>

New Zealand's *Care of Children Act, 2004* says that a judge must not make an order giving a violent parent day-to-day care of the child (custody) or contact, other than supervised contact, unless satisfied that the child will be safe.<sup>90</sup> In deciding whether the child will be safe, the judge must consider:

- the nature and seriousness of the violence;
- how recently it occurred;
- the frequency of the violence;
- the likelihood of more violence;
- the physical or emotional harm the violence caused the child;
- whether the other parent thinks that the child will be safe with the parent found to have been violent;
- the child's views;
- any steps the violent parent has taken to prevent violence from occurring again;
- anything else the judge thinks is relevant.<sup>91</sup>

In addition, New Zealand's law permits a judge to make any order to protect the child's safety, even if he or she is unable to determine on the evidence provided whether the allegation of violence is proved, so long as the judge is satisfied that there is a real risk to the child's safety.<sup>92</sup>

### **QUESTIONS**

11. Should the *Family Relations Act* create a presumption that a violent parent ought not to be given custody of a child unless that parent can prove it would be in the best interests of the child to do so? Why or why not?
12. Should the *Family Relations Act* include presumptions with respect to access or parenting time if there has been family violence? Why or why not?
13. If you think that violence ought to trigger certain presumptions with respect to access in the *Family Relations Act*, what should they be? Should the presumption depend on the type of violence at issue (For example, a presumption of no access in the case of sexual abuse; and a presumption of supervised access in the case of other forms of violence if there is a continuing risk?)

14. Should the *Family Relations Act* require that access orders include conditions on the parent found to have been violent, as Arizona’s law does? If so, what conditions?

Possible conditions on access orders		Additional Comments
attendance at a program or counseling designed for perpetrators of violence	<input type="checkbox"/>	
no use of alcohol or non-prescription drugs during access visits and 24 hours before	<input type="checkbox"/>	
no overnight access visits	<input type="checkbox"/>	
a bond <sup>93</sup>	<input type="checkbox"/>	
an order that the address of the other parent and the child remain confidential	<input type="checkbox"/>	
other:	<input type="checkbox"/>	

15. Should the *Family Relations Act* follow New Zealand’s *Care of Children Act, 2004* (see above) and set out a list of factors judges are to consider when making orders involving children where violence has occurred? Why or why not?

16. Should the *Family Relations Act* follow New Zealand’s *Care of Children Act, 2004* and allow a judge to make any order to protect a child’s safety, even if the judge has not been able to find that the allegation of violence is proved, so long as the judge is satisfied that there is a real risk to the child? Why or why not?

**Discussion Point (5) – Family Violence & Collaborative Decision-Making**

The 2005 Family Justice Reform Working Group report recommended that, unless exempted, people wishing to use the court to resolve a family dispute be required to have first attended one dispute resolution session.<sup>94</sup> This could take the form of one mediation session or a collaborative law<sup>95</sup> meeting.

The Ministry of Attorney General has completed further research into the use of mandatory and quasi-mandatory consensual dispute resolution (CDR) in family law disputes. It showed that, while the matter is not free from controversy, a number of jurisdictions, such as Australia,<sup>96</sup> California,<sup>97</sup> Utah,<sup>98</sup> Nevada,<sup>99</sup> and South Dakota<sup>100</sup> have mandatory CDR in their family laws for contested custody and access cases.

Family violence is an important consideration in the design and provision of CDR services. In some situations, the violence may be such that participation in CDR may be inappropriate because of the safety risk. In others, the nature of the violence may be such that the mediator would not be able to balance the power difference between the parties. For example, it would not be possible to work out a true agreement if one of the parties is terrified or intimidated by the other.

The jurisdictions that have mandatory CDR in their family laws also have exemptions or special protocols for cases involving family violence. For example, s. 60I(9) of Australia’s *Family Law Act 1975* lists a number of exemptions to mandatory CDR, including situations where a judge is satisfied that there are reasonable grounds to believe that:

- one of the parties has abused the child;
- there is a risk of abuse to the child if the application were delayed;

- there has been family violence by one of the parties;
- there is a risk of family violence by one of the parties.

California’s *Family Code* establishes a special kind of mediation for cases involving violence. Section 3181(a) requires the mediator to meet with the parties separately and at separate times. A support person may accompany the person alleging to be the victim of domestic violence to mediation orientation or mediation sessions, to provide moral and emotional support.<sup>101</sup> However, safeguards, such as separate mediation sessions, are only effective to the extent they are applied consistently.<sup>102</sup>

The *Utah Code* provides that:

*(5) The director of dispute resolution programs for the courts, the court, or the mediator may excuse either party from the requirement to mediate for good cause.*<sup>103</sup>

Nevada’s law authorizes judges to exempt a contested custody or access application if “good cause” is shown.<sup>104</sup> Evidence of “a history of child abuse or domestic violence by one of the parties” is considered “good cause” for an exemption from mandatory mediation.<sup>105</sup>

In South Dakota, an exemption is available from the requirement to attempt mediation of a custody or visitation (access) dispute if a judge determines that it would be “inappropriate under the facts of the case.”<sup>106</sup>

**QUESTIONS**

17. If B.C. were to adopt mandatory CDR for contested custody or access disputes, should it develop exemptions similar to those jurisdictions that already have mandatory CDR, as discussed above?
18. Who ought to decide if a case should be exempted?

the judge	<input type="checkbox"/>
the person(s) conducting the dispute resolution session	<input type="checkbox"/>
the manager of the family justice programs and services in the particular region where the case will be heard	<input type="checkbox"/>
other: _____	<input type="checkbox"/>

**PART C – GENERAL FEEDBACK**

**QUESTIONS**

19. Which three issues regarding family violence do you consider to be the most pressing?
20. Are there issues related to family violence and the *Family Relations Act* not covered in this paper that you would like to raise?

Please provide your [feedback](#).

**ENDNOTES**

<sup>1</sup> Statistics Canada, "Measuring Violence Against Women: Statistical Trends 2006," (October 2006) at 30-31 & 35, online: <http://www.statcan.ca/english/research/85-570-XIE/85-570-XIE2006001.pdf>, citing information from the General Social Survey 2004 on Victimization (last accessed: April 3, 2007).

<sup>2</sup> Martha Shaffer, "The Impact of Wife Abuse on Child Custody and Access Decisions," (2004) 22 *C.F.L.Q.* 85 at 89, citing Jeffrey Edleson, "The Overlap Between Child Maltreatment and Woman Abuse" (February 1997, revised April 1999).

<sup>3</sup> *Ibid.* at 94 & 95, citing Kolbo, *et al.*, 1996 and Rudo *et al.*, 1998.

<sup>4</sup> Christine Alksnis and Jo-Anne Taylor, prepared for the Correctional Service of Canada, "Introduction" in "The Impact of Experiencing and Witnessing Family Violence during Childhood: Child and Adult Behavioural Outcomes," (1994) online: [http://www.csc-scc.gc.ca/text/pblct/fv/fv04/toce\\_e.shtml](http://www.csc-scc.gc.ca/text/pblct/fv/fv04/toce_e.shtml) (last accessed: April 21, 2007).

<sup>5</sup> Statistics Canada, "Family Violence in Canada: A Statistical Profile 2006" (July 2006) at 15, online: <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/85-224-XIE2006000.pdf> (last accessed: April 3, 2007) & Peter G. Jaffe, *et al.* "Making Appropriate Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices," (September 2005) at 21. See also British Columbia's Ministry of Solicitor General, *Violence Against Women in Relationships Policy* (updated to March 2004) at 11 which states that "...risk to women is highest just before, during and immediately after separation..." online: [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/vawir.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/vawir.pdf) (last accessed: April 3, 2007).

<sup>6</sup> See discussion of "Typologies of Family Violence" in Peter G. Jaffe, Ph.D., C.Psych. *et al.*, (Sept. 2005) "Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices," at 16-20, online: [http://hspsc.org/policy\\_forums/pdf/JaffePaper\\_JusticeReport\\_Sept05.pdf](http://hspsc.org/policy_forums/pdf/JaffePaper_JusticeReport_Sept05.pdf) (last accessed: April 3, 2007).

<sup>7</sup> *Ibid.* at 20.

<sup>8</sup> *Ibid.* at 16.

<sup>9</sup> Family Justice Reform Working Group, "A New Justice System for Families and Children," presented to the B.C. Justice Review Task Force (May 2005) at 41, online: [http://www.bcjusticereview.org/working\\_groups/family\\_justice/final\\_05\\_05.pdf](http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf) (last accessed: April 3, 2007).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* at 7, 34-35.

<sup>12</sup> *Ibid.* at 41.

<sup>13</sup> *Ibid.* at 7, 42-45.

<sup>14</sup> *Ibid.* at 48.

<sup>15</sup> *Ibid.* at 47.

<sup>16</sup> *Ibid.* at 13.

<sup>17</sup> *Ibid.* at 42-46, 74.

<sup>18</sup> *Ibid.* at 42, 104, 107-108.

<sup>19</sup> *Ibid.* at 81.

<sup>20</sup> *Family Relations Act*, R.S.B.C. 1996, c.128.

<sup>21</sup> See, for example *D.E.I. (Re)*, [1998] B.C.J. No. 1791 (S.C.) (Q.L.); *P.L.W. v. B.D.H.*, [1999] B.C.J. No. 231 (S.C.) (Q.L.); *P.B. v. H.R.*, [2000] B.C.J. No. 313 (S.C.) (Q.L.); *J.N.Z. v. J.D.*, [1994] B.C.J. No. 969 (S.C.) (Q.L.); and *Gibb v. Gibb*, [2000] B.C.J. No. 2730 (S.C.) (Q.L.).

<sup>22</sup> *Family Law Act*, S.A. 2003, c. F-4.5, s. 18(3).

<sup>23</sup> Bill C-22, *An Act to Amend the Divorce Act*, s. 16.2(3), online: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?pub=bill&doc=C-22&parl=37&ses=2&language=E&File=28> (last accessed: April 3, 2007).

<sup>24</sup> British Columbia's Ministry of Attorney General and Ministry of Solicitor General and Public Safety, "Violence Against Women in Relationships Policy," available online: [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/vawir.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/vawir.pdf) at footnote 1, (last accessed: April 2, 2007).

<sup>25</sup> See *Family Law Act*, S.A. 2003, c. F-4.5, s. 18(3) & Bill C-22, *An Act to Amend the Divorce Act*, s.16.2(3). See also: *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 2(d); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D93, s. 2(1); *Domestic Violence Protection Act, 2000*, S.O. 2000, c. 33, s. 2 [unproclaimed]; *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 5(1); *Victims of Family Violence Act*, R.S.P.E.I., 1988, c. V-3.2, s. 2; *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 3(1); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 1; *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 1(2); & *Family Abuse Intervention Act*, S.Nu. 2006, c. 18, s. 3 [unproclaimed]. See also B.C. Ministry of Solicitor General, *Violence Against Women in Relationships Policy* (updated to March 2004) which refers to "assault", at 4, online: [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/vawir.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/vawir.pdf) (last accessed: April 3, 2007).

<sup>26</sup> See *Family Law Act*, S.A. 2003, s. F-4.5, s. 18(3). See also *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 1(e)(iv); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 2(d)(iv); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D93, s. 2(1)(e); *Domestic Violence Protection Act, 2000*, S.O. 2000, c. 33, s. 2(5) [unproclaimed]; *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 5(1)(d); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 2(2)(e); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 3(1)(e); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 1; *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 1(2)(c); & *Family Abuse Intervention Act*, S.Nu. 2006, c. 18, s. 3 [unproclaimed]. See also B.C. Ministry of Solicitor General, *Violence Against Women in Relationships Policy* (updated to March 2004), at 4, online: [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/vawir.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/vawir.pdf) (last accessed: April 3, 2007).

<sup>27</sup> See *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D93, s. 2(1)(c); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 2(2)(e); *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 1(2)(e) & *Family Abuse Intervention Act*, S.Nu 2006, c. 18, s. 3(1)(e) [unproclaimed]. See also Alberta's *Family Law Act*, S.A. 2003, s. F-4.5, which is ambiguous. Section 18(3) refers to "injury". It is unclear whether that could cover psychological injury as well as physical injury. See also B.C. Ministry of Solicitor General, *Violence Against Women in Relationships Policy* (updated to March 2004) at 4, online: [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/vawir.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/vawir.pdf) (last accessed: April 3, 2007).

<sup>28</sup> See *Protection Against Family Violence Act*, S.N.L. 2005, c. F-3.1, s. 3(1)(g); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 2(2)(f); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 1; *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s.1(2)(e) & *Family Abuse Intervention Act*, S.Nu 2006, c. 18, ss. 3(1)(f) & 3(1)(g) [unproclaimed]. See also B.C. Ministry of Solicitor General, *Violence Against Women in Relationships Policy* (updated to March 2004) at 4, online: [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/vawir.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/vawir.pdf) (last accessed: April 3, 2007).

<sup>29</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 1(e)(ii); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 2(d)(ii); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 2(1)(a) & (b); *Domestic Violence Protection Act, 2000*, S.O. 2000, c. 33, ss. 2(3) & 2(5) (**unproclaimed**); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, ss. 5(1)(b) & (d); *Protection Against Family Violence Act*, S.N.L. 2005, c. F-3.1, ss. 3(1)(b), (c) & (e); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, ss. 2(2)(c) & (e); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 1; *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 1(2)(b) & *Family Abuse Intervention Act*, S.Nu 2006, c. 18, ss. 3(1)(a)-(c) [**unproclaimed**]. See also B.C. Ministry of Solicitor General, *Violence Against Women in Relationships Policy* (updated to March 2004) at 4, online: [http://www.pssg.gov.bc.ca/victim\\_services/publications/policy/vawir.pdf](http://www.pssg.gov.bc.ca/victim_services/publications/policy/vawir.pdf) (last accessed: April 3, 2007).

<sup>30</sup> See *Family Law Act*, S.A. 2003, c. F-4.5, s. 18(3) & Bill C-22, *An Act to Amend the Divorce Act*, s. 16.2(3).

<sup>31</sup> *Family Law Act*, *ibid.*

<sup>32</sup> *Children's Law Reform Act*, R.S.O. 1990, c. C-12, s. 24(5).

<sup>33</sup> See *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 5(1)(a) & *Protection Against Family Violence Act*, S.N.L. 2005, c. F-3.1, s. 3(1)(a). See also *Domestic Violence Protection Act, 2000*, S.O. 2000, c. 33, s. 2 (**unproclaimed**) & *Family Abuse Intervention Act*, S.Nu 2006, c. 18, s. 3(2) [**unproclaimed**].

<sup>34</sup> Parliament of Canada, "For the Sake of the Children: Report of the Special Joint Committee on Child Custody and Access," (December 1998) at recommendation 43, online: <http://cmte.parl.gc.ca/Content/HOC/committee/361/sjca/reports/rp1031529/sjcarp02/12-ch1-e.htm#0.2.5FPCNZ.Y2KCKM.XT5O3F.13> (last accessed: April 3, 2007).

<sup>35</sup> Final Federal-Provincial-Territorial Report on Custody and Access and Child Support (November 2002) at 19, online: <http://www.justice.gc.ca/en/ps/pad/reports/fic2002e.pdf> (last accessed: November 20, 2006). See also Nicholas Bala *et al.*, "Allegations of Child Abuse in the Context of Parental Separation: A Discussion Paper," (2001) at part 1.1, online: <http://www.justice.gc.ca/en/ps/pad/reports/2001-FCY-4.html> (last accessed: April 3, 2007) ["Allegations of Child Abuse"].

<sup>36</sup> "Allegations of Child Abuse," *ibid.* at part 1.1.

<sup>37</sup> *Ibid.* at part 3.1.1 & Nicholas Bala, "Sexual Abuse Allegation When Parents Have Separated: Social Context & Evidentiary Issues," (February 2002) at 16, online: <http://law.queensu.ca/facultyAndStaff/facultyProfiles/bala/balaRecentPapers/balaAbuseAllegationsParents.pdf> (last accessed: April 3, 2007) ["Sexual Abuse Allegation"].

<sup>38</sup> See "Allegations of Child Abuse," *ibid.* at part 3.2. "Defamation," is defined as: "An intentional false communication, either published or publicly spoken, that injures another's reputation or good name." *Black's Law Dictionary*, 6<sup>th</sup> ed. s.v. "Defamation".

<sup>39</sup> See "Allegations of Child Abuse," *ibid.* "The law of negligence is founded on reasonable conduct or reasonable care under all circumstances of particular case. Doctrine of negligence rests on duty of every person to exercise due care in [that person's] conduct toward others from which injury may result." *Black's Law Dictionary*, 6<sup>th</sup> ed., s.v. "Negligence".

<sup>40</sup> An action based on malicious prosecution is "An action for damages brought by person, against whom civil suit or criminal prosecution has been instituted maliciously and without probable cause, after termination of prosecution of such suit in favour of person claiming damages." *Black's Law Dictionary*, 6<sup>th</sup> ed., s.v. "Malicious prosecution".

<sup>41</sup> "Allegations of Child Abuse," *supra* note 35 at part 3.2 & "Sexual Abuse Allegation," *supra* note 37 at 16.

<sup>42</sup> "Sexual Abuse Allegation," *ibid.* at 17-18.

<sup>43</sup> *Family Law Act 1975*, CWTH.

<sup>44</sup> *Criminal Code*, R.S.C. 1985, c. C-46.

<sup>45</sup> These may be either lawyers in private practice or those working for the Legal Services Society of B.C. The Legal Services Society of British Columbia will pay for a lawyer "in emergency situations to help eligible clients obtain immediate court orders if these are needed to ensure their and/or their children's safety and security". See, Legal Services Society of British Columbia, "Fact Sheet – Legal Representation: Family Law," at 1 available online at: [http://www.lss.bc.ca/assets/newsroom/fact\\_sheets/Legal\\_representation\\_family\\_law.pdf](http://www.lss.bc.ca/assets/newsroom/fact_sheets/Legal_representation_family_law.pdf) (last accessed: April 4, 2007).

<sup>46</sup> *Family Relations Act*, *supra* note 20, s. 37.

<sup>47</sup> See, for example, *Abe v. Abe*, [1995] B.C.J. No. 1643 (S.C.) (Q.L.) & *Levassier v. Taylor*, [1995] B.C.J. No. 907 (Prov. Ct.) (Q.L.).

<sup>48</sup> See, for example, *Wilson (Re)*, 2000 BCSC 648.

<sup>49</sup> Peter G. Jaffe and S. Grace Kerr, "The Need for Differentiated Clinical Approaches for Child Custody Disputes with Findings of Domestic Violence and Legal Aspects of Domestic Violence and Custody/ Access Issues," presented at the National Family Law Program (Whistler, B.C., June 29-July 2, 1998) at 14.

<sup>50</sup> *Family Relations Act*, *supra* note 20, s. 38.

<sup>51</sup> *Ibid.* at s. 126.

<sup>52</sup> *Family Law Sourcebook for British Columbia*, loose-leaf (Vancouver: The Continuing Legal Education Society of British Columbia) at §8.35.

<sup>53</sup> See *Family Law Act*, R.S.O. 1990, c.F.3 at s.24; *Family Law Act*, R.S.P.E.I. 1988, c.F-2.1 at s.25; *Family Law Act*, S.N.W.T. 1997, c.18 at s.55; *Family Law Act (Nunavut)*, S.N.W.T. 1997, c.18 at s. 55.

<sup>54</sup> See, for example, *Family Law Act*, S.A. 2003, c. F-4.5, s. 68(1)(c) (restraining attendance, entry at or near primary home); *Children's Law Act, 1997*, S.S. 1997, c. C-8.2, s. 23 (restraining harassment/communication/interference re applicant or child in the lawful custody of applicant); *Child Custody Enforcement Act*, C.C.S.M. c. C360, s. 8 (restraining harassment of the applicant or a child in the lawful custody of the applicant); *Family Law Act*, R.S.P.E.I. 1988, c. F-2.1, s. 45 (restraining harassment/communication re the applicant or children in the applicant's lawful custody); *Children's Law Act*, R.S.N.L. 1990, c. C-13, s. 42 (restraining harassment/communication re the applicant or children in the lawful custody of the applicant); *Children's Law Act*, R.S.Y. 2002, c. 31, s. 36 (restraining harassment of the applicant or a child in the lawful care or custody of the applicant); & *Children's Law Act*, S.N.W.T. 1997, c. 14, s. 72 (restraining harassment/communication re applicant or children in the applicant's lawful custody).

<sup>55</sup> *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27; *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02; *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93; *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29; *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1; *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2; *Family Violence Prevention Act*, R.S.Y. 2002, c. 84; and *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. Ontario and Nunavut also have such statutes, although they have not yet been brought into force: *Domestic Violence Protection Act, 2000*, S.O. 2000, c. 33 & *Family Abuse Intervention Act* S.Nu. 2006, c. 18.

<sup>56</sup> See the definition of "family members" in *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 1(d).

<sup>57</sup> See, for example, *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 2; *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 3; *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 6; *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, ss. 5 & 6; *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4; *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 4; and *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 4. Manitoba's *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D93, s. 4 refers to "protection orders" that designated JPs or magistrates may grant, including, in certain circumstances "by telecommunication".

<sup>58</sup> See, for example, *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 6(2), which allows applications to be made "by telecommunication"; *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 8(2), which also allows applications "by telecommunication"; *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 4(2)(c) & 5, which contemplate applications "by telecommunication" defined in s. 1 to include telephone, electronic mail or fax; *Domestic Violence Intervention Regulations*, N.S. Reg. 75/2003, s. 4(3) stipulates that an application for an emergency intervention order must be made by telephone; *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(7) allows applications "by telecommunication" defined in s. 1(p) as including communication by telephone or fax; *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 2(3) allows applications "by telecommunication" if "no designated justice is readily available to hear the application in person"; and *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 2(4)(b) & *Protection Against Family Violence Regulations*, R-013-2005, s. 3.

<sup>59</sup> See, for example, *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 6(1) & *Protection Against Family Violence Regulation*, Alta. Reg. 80/99, s. 3; *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, ss. 8(1)(b) & (c) & *Victims of Domestic Violence Regulations*, V-6.02-Reg. 1, s. 3; *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 4(2)(b) & (c); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, ss. 7(1)(b) & (c) & *Domestic Violence Intervention Regulations*, N.S. Reg. 75/2003, s. 3; *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, ss. 4(2)(a) & (b); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, ss. 4(6)(b) & (c) & *Victims of Family Violence Act Regulations*, P.E.I. Reg. EC558/96, s. 3; *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, ss. 2(1)(b) & (c) & *Family Violence Prevention Act O.I.C.* 1999/190, s. 2 and *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 2 & *Protection Against Family Violence Act Regulations*, R-013-2005, s. 2(1).

<sup>60</sup> Alberta has Queen's Bench protection orders in addition to emergency protection orders: *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 4. Saskatchewan has victim's assistance orders in addition to emergency intervention orders: *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 7. P.E.I. and the Yukon also have victim assistance orders: *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 7 & *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 7. In the Northwest Territories, there are Supreme Court protection orders in addition to emergency protection orders: *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 7. Manitoba has prevention orders the Court of Queen's Bench may make: *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D93, s. 14.

<sup>61</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 4(2)(b). See also *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(h); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(h); & *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(i).

<sup>62</sup> See *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D93, s. 14(1)(l).

<sup>63</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, ss. 2(3)(c) & 4(2)(c); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, ss. 3(3)(a) & 7(1)(a); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 14(1)(d) & 14(2); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(a); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(a); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(a); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, ss. 4(3)(a) & 7(1)(a); and *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(b) & 7(2)(b).

<sup>64</sup> See *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(l) & *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(j.1).

<sup>65</sup> See *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(m) & *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(h)(ii).

<sup>66</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, ss. 2(3)(d) & 4(2)(h); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, ss. 3(3)(b) & 7(1)(d); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 7(1)(d) & 14(1)(e); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(b); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(b); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(b); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, ss. 4(3)(b) & 7(1)(d); & *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(c) & 7(2)(c).

<sup>67</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, ss. 2(3)(e) & 4(2)(i); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, ss. 3(3)(c) & 7(1)(e); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 7(1)(f) & 14(1)(g); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(c); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(c); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(c); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, ss. 4(3)(c) & 7(1)(e); & *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(d) & 7(2)(d).

<sup>68</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 2(3)(b). Section 4(2)(b) of Alberta's law also prohibits the respondent from contacting or "associating in any way" with the victim while s. 4(2)(g) restrains the respondent from "making any communication likely to cause annoyance or alarm" to the victim either directly or indirectly through another person, including contact with the employers, employees, or co-workers of the victim or other family members. See also *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 3(3)(d). Section 7(1)(c) restrains the respondent from "making any communication likely to cause annoyance or alarm to the victim, including...contact with the victim and other family members or their employers, employees or co-workers". See also *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 7(1)(b) & 14(1)(b); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(d); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(d); and the *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(d). See also *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 4(3)(d). Section 7(1)(c) restrains the respondent from "any communication likely to cause annoyance or alarm to the victim". Finally, see *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(a) & 7(2)(a).

<sup>69</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, ss. 2(3)(a) & 4(2)(a); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 7(1)(b); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 7(1)(c) & 14(1)(c); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(e); & *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 7(1)(b). See also *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(e) & *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(e) which contemplate orders requiring the respondent to "stay away from any place identified specifically or generally in the order" and s. 14(1)(o) of Manitoba's statute that allows a judge to prohibit the respondent "from entering upon the premises while the subject is residing there" if the victim and respondent reside or have resided in the same premises.

<sup>70</sup> See *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 7(1)(a) & 14(1)(a).

<sup>71</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, ss. 2(3)(f) & 4(2)(l); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 7(1)(g), 7(1)(h), 14(1)(h) & 14(1)(i); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(j); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(j); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 4(3)(e); & *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(g) & 7(2)(h).

<sup>72</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 4(2)(d); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 7(1)(f); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, s. 14(1)(j); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 7(1)(f); & *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, s. 7(2)(g). The family violence laws of Alberta, Saskatchewan, the Yukon and the Northwest Territories link the possibility of monetary reimbursement to losses suffered as a "direct result" of the violence. Manitoba's s. 14(1)(j) does not refer to losses experienced by children specifically. Rather it refers to compensation "to the subject".

<sup>73</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 4(2)(e); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 7(1)(g); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, ss. 7(1)(e) & 14(1)(f); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(f); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(f); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(g); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 7(1)(g); and *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(e) & 7(2)(e).

<sup>74</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 4(2)(f); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 7(1)(h); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, s. 14(1)(k); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(g); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(g); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(h)(i); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 7(1)(h); & *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(f) & 7(2)(f).

<sup>75</sup> See *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 4(2)(j); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 7(1)(j); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, s. 14(1)(n); & *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 7(1)(j).

<sup>76</sup> *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 4(2)(k); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, s. 7(1)(i); *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. c. D-93, s. 14(1)(m); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, s. 7(1)(i); & *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 7(2)(i) & (j). Section 7(2)(j) of the Northwest Territories' family violence statute authorizes an order requiring the respondent to pay for counselling for a child.

<sup>77</sup> See, for example, *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(i); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(i); & *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(j).

<sup>78</sup> See *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(k); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(n); & *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 4(3)(f).

<sup>79</sup> See *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, s. 7(1)(b).

<sup>80</sup> See *Family Law Act*, S.A. 2003, c. F-4.5, ss. 2(3)(g) & 4(2)(m); *Victims of Domestic Violence Act*, S.S. 1994, c. V-6.02, ss. 2(3)(e) & 7(1)(k); *Domestic Violence Intervention Act*, S.N.S. 2001, c. 29, s. 8(1)(l); *Family Violence Protection Act*, S.N.L. 2005, c. F-3.1, s. 6(o); *Victims of Family Violence Act*, R.S.P.E.I. 1988, c. V-3.2, ss. 4(3)(k) & 7(1)(c); *Family Violence Prevention Act*, R.S.Y. 2002, c. 84, ss. 4(2)(f) & 7(1)(k); & *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24, ss. 4(3)(h) & 7(2)(k).

<sup>81</sup> *Family Law Act*, S.A. 2003, c. F-4.5, s. 18; *Children's Law Reform Act*, R.S.O. 1990, c. C-12, s. 24(4); *Children's Law Act*, R.S.N.L. 1990, c. C-13, s. 31; *Children's Law Act*, S.N.W.T. 1997, c. 14, s. 17(3); *Children's Law Act (Nunavut)*, S.N.W.T. 1997, c. 14, s. 17(3); Australia's *Family Law Act 1975*, ss. 43, 60CC & 60CF; New Zealand's *Care of Children Act 2004*, ss. 51, 59 & 60; 1998 *Arizona Revised Statutes*, 25-403.03; California *Family Code*, s. 3011; *Colorado Statutes*, 14-10-124, 1.5(a)(IX) & (X); *Revised Statutes of Louisiana*, Title 9: 364; & *Child Custody Act of 1970*, Act 91 of 1970, Statutes of Michigan, 722.23, Sec. 3(k).

---

<sup>82</sup> *Arizona Revised Statutes*, 25-403.03D.

<sup>83</sup> *Ibid.*, 25-403.03A.

<sup>84</sup> *Ibid.*, 25-403.03F.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> *Louisiana Revised States*, 9:364A.

<sup>88</sup> *Ibid.*, 9:364C & D.

<sup>89</sup> California *Family Code*, ss. 3020 & 3044.

<sup>90</sup> *Care of Children Act, 2004*, s. 60.

<sup>91</sup> *Ibid.* at s. 61.

<sup>92</sup> *Ibid.* at s. 60(6).

<sup>93</sup> A bond is "An obligation;... [a] written promise to pay money or do some act if certain circumstances occur or a certain time elapses." *Black's Law Dictionary*, 7<sup>th</sup> ed., s.v. "bond."

<sup>94</sup> Family Justice Reform Working Group, *supra* note 9 at 45.

<sup>95</sup> The Family Justice Reform Working Group describes collaborative law as "a way for divorcing or separating couples to work together, with their lawyers, to resolve disputes respectfully and constructively. The couple and their lawyers agree at the start not to resort to the courts and that if either of them starts a contested court action, the process ends and both lawyers withdraw from the case. This means that each person has the support of an advocate who has been hired specifically to help that person resolve matters. Other professionals, including financial advisors and child specialists may be involved as well, depending on the people's needs and the issues involved..." Family Justice Report Working Group, *supra* note 9 at 41 & 42.

<sup>96</sup> *Family Law Act 1975*, *supra* note 43, s. 60I.

<sup>97</sup> California *Family Code*, 3170.

<sup>98</sup> *Utah Code*, 30-3-39.

<sup>99</sup> Mediation is mandatory in Nevada in counties with populations over 100,000: N.R.S., 3.475 & 3.500.

<sup>100</sup> S.D.C.L., 25-4-56.

<sup>101</sup> *Family Code*, 6303(a) & (c).

<sup>102</sup> Jaffe, *et al.*, *supra* note 49 at 36, citing (Hirst, 2002) for the proposition that Californian "[family] mediators held joint sessions in nearly half of the cases in which an independent screening interview had identified allegations of spousal violence, in direct violation of state regulations for separate sessions..."

<sup>103</sup> *Utah Code*, 30-3-39(5).

<sup>104</sup> N.R.S., 3.475 & 3.500.

<sup>105</sup> *Ibid.*

<sup>106</sup> S.D.C.L., 25-4-56.