



BACKGROUND

ISSUE: Effective Enforcement of Peace Bonds and Other Criminal Protection Orders¹

This backgrounder is based on the information available at April 4, 2002. In addition to the sources cited, it incorporates input from many experts on violence against women, including those involved in the Community Coordination for Women's Safety project. This includes the BC Association of Specialized Victim Assistance and Counselling Programs, BC Municipal Chiefs, the Department of Justice National Crime Prevention Centre, the Justice Institute of BC, Multilingual Orientation Service Association for Immigrant Communities (MOSAIC), the Pacific Association of First Nations Women, RCMP "E" Division, representatives from the criminal and civil bar, and Victim Services Division (BC Ministry of Public Safety and Solicitor General).

This document is also available on the website of the BC Association of Specialized Victim Assistance and Counselling Programs:

- Go to www.endingviolence.org
- Select "Community Coordination for Women's Safety"
- Select "Documents-Coordination Resources"

¹ In this paper the term "protection order" is used to describe an order containing a condition that affords safety and security to a person or persons.

FUNDING PARTNERS:

- Law Foundation of BC
- Ministry of Public Safety and Solicitor General
- Ministry of Community, Aboriginal and Women's Services
 - National Crime Prevention Centre:
*Community Mobilization Program &
Crime Prevention Partnership Program*

BACKGROUND:

Several Canadian jurisdictions, including Saskatchewan, Alberta, Manitoba and Yukon, have recently enacted provincial domestic violence legislation. Ontario has passed a similar statute. These acts create provincial or territorial emergency protection orders designed to protect women and children who are victims of violence at the hands of intimate partners.

In BC Lynn Stephens, Minister of State for Women's Equality, has indicated her intention to introduce similar provincial protection orders legislation. (See: Ministry of Community, Aboriginal and Women's Services Core Review for most recent reference). She has also indicated that she is prepared to consider options other than legislation in order to achieve more effective enforcement of protection orders.

Domestic violence acts were introduced in part because it was felt that existing protection orders contained in the *Criminal Code* or provincial child welfare and family legislation were not adequate to protect abused women in emergency situations.

Currently the Federal Provincial Territorial (F/P/T) Working Group on Spousal Assault is considering a number of proposed *Criminal Code* amendments designed to enhance the criminal justice response to domestic violence. These proposals include:

- Introducing a new offence of breach of a restraining provision and making release following arrest for this offence a reverse onus bail proceeding
- Creating a separate (add-on) charge of committing an offence against an intimate or family member
- Amending *Criminal Code* section 127 (disobeying an order of the court) to create a hybrid offence
- Making it explicit in s. 810 that a warrant can be sought
- Extending the available orders under s. 810 to include requirements that specifically address domestic violence.

British Columbia (as represented by the Ministry of Attorney General) is involved in the process of examining these proposals. The Ministry of Public Safety and Solicitor General (MPSSG) may also play an important role by following the F/P/T process and, where appropriate, providing input on any law reform recommendations which arise from it.

This paper focuses on the use and effectiveness of peace bonds (section 810 recognizances under the *Criminal Code*). A peace bond is a court order requiring the defendant to keep the peace and be of good behaviour. It is not a criminal charge but is intended to help prevent a criminal offence, often a spousal assault, from occurring.

Many of the concerns expressed here regarding peace bond use and effectiveness have also been raised in relation to other types of orders containing protective conditions. This would include, for example, bail, probation and conditional sentence orders as well as restraining orders under the s. 37 of the *Family Relations Act*. (See: Joint Committee on Domestic Violence 1999; Lloyd 2000; Varcoe, Jaffer & Kelln 2000)

ANALYSIS:

Vigorous enforcement of protection orders has been shown to enhance victim safety. Unfortunately, not much information is available about how the system is actually responding to peace bond breaches. Some research suggests that s. 811 breach charges are uncommon and that convictions for a breach are rare. (Meredith 1995; Lloyd 2000) A number of studies based on interviews with justice system professionals and victims, have also identified the need for more effective enforcement of orders. (EKOS Research 2000; Lloyd 2000; Varcoe Jaffer & Kelln 2000) Similar concerns have been raised about the enforcement of other criminal orders which provide protection including bail and probation orders.

In BC a number of potential measures or approaches are available which create the potential for effective enforcement. For example the Ministry of Attorney General Violence Against Women in Relationships Policy (VAWIR) requires that a warrant be requested in peace bond cases. (VAWIR Policy provision 23. Police Section; and provision F.3 Crown Section) This helps ensure that controls on the defendant's behaviour (conditions of release) are put in place almost immediately. The VAWIR Policy also contains provisions designed to help police and Crown counsel screen cases for risk of further violence and request detention of the defendant where appropriate. (VAWIR Policy Provision 5(iv) Police Section and provision 2 Crown Section.) In addition to the Policy, BC has a protection order registry which provides police with round the clock access to information on protection orders and the conditions they contain. Partnerships between community service providers and criminal justice system representatives are another potential avenue for creative solutions. In many BC communities, for example, local coordination committees may address enforcement issues. Promising case outcomes are also associated with interagency service delivery models involving police and specialized victim services operating in the Lower Mainland.

POSSIBLE DISCUSSION POINTS:

Case Tracking and Risk Assessment

What distinguishes the breach of a protective condition in a spousal assault case from a breach of bail or probation, for example, in a non-spousal case is the potential for the defendant's ongoing contact with the victim and the recognized dynamic of escalating violence. The defendant has a strong desire to prevent his partner from pursuing any legal remedies. Any effective response to a reported breach of a protection order in a spousal case must take this added risk factor into account. As a practical matter, the breach of terms of bail, probation or an officer in charge release in a non-spousal case may not always be dealt with as a priority. In a spousal case, any reported breach must be dealt with as a high-risk situation with an immediate response required.

Justice system personnel require the legal and practical tools to distinguish protection order breaches in domestic violence cases from those in other cases and appropriately assess and respond to the degree of risk involved.

Enforcement of Breaches

Questions are being raised about how the potential for effective enforcement of orders can be realized. It appears that in violence against women in relationships cases, the rate of non-compliance with protective conditions is relatively high. (Plecas 2000; EKOS Research 2000; Lloyd 2000; Varcoe, Jaffer & Kelln 2000). A need for more effective enforcement has been identified.

Peace Bonds and Charging Practices

The relationship between the use of peace bonds in combination with a stay of proceedings¹ also raises questions about victim safety. A number of BC studies have found a high ratio (almost 50%) of charges stayed in spouse assault cases. (Plecas 2000; Sabourin 1995; Richard 1996; Police Services Division 1999.) In a 1999 Police Services Division survey of BC Spouse assault cases, it was found that 20% of all the cases that resulted in non-conviction involved peace bonds in combination with a stay. This is inconsistent with the intent of the VAWIR Policy, which calls for vigorous prosecution and enforcement.

It is recognized that in many spouse assault cases prosecutors are seeking out creative methods to bring the matter forward to trial where the evidence warrants it, rather than relying on a peace bond and a stay when difficulties arise. These efforts may be stymied by a lack of adequate resources. The risk a stay of proceedings might pose for the victim must be acknowledged by the criminal justice system. It has been shown that offenders who have their charges stayed are consistently more likely to re-assault their victim and that conversely, victim safety is enhanced when assailants are sentenced.

Status of the Protection Order Registry (POR)

Once the peace bond is in place, ready police access to details of the recognizance (including all its conditions) is critical to the rapid enforcement of reported breaches. Through the POR, police in BC currently have 24 hour a day 7 day a week access to information about the existence of protection orders and the conditions they contain. Since its inception, the registry had been expanded to include all types of protection orders containing a condition that affords safety and security to a specific (named) person. In addition to peace bonds and civil restraining orders, the POR now includes judicial interim release (bail) orders, probation orders, conditional sentence orders, psychiatric assessment orders, disposition orders and officer in charge releases.

Defendant information from the POR is also used for other purposes related to victim protection and enforcement of protection orders:

- POR data is downloaded daily for use by the Canadian Police Information Centre (CPIC). If there is a client match in the Canadian Firearms Registration System, an alert (called an FIP hit) is issued to the BC Firearms Office for further investigation
- The POR is used as an information database for the Victim Notification Unit, enabling the unit to check if there is an active protection order and if so, to notify the victim (or protected party) when an inmate is released from a correctional facility
- Victims can also access POR information to receive instructions on how to register orders, confirm their orders are registered, and to file contact information for notification purposes.

The other major source of information for police on current s. 810 recognizances is CPIC. It has been suggested that in some respects the POR is a more refined enforcement tool than CPIC for the following reasons:

- The POR includes all conditions of the protection order²
- The ease and speed of entry of information onto the POR database with the result that it is more up to date
- The fact that victims have access to information on the POR.

¹ A stay is entered when Crown counsel or the court decide to discontinue the process at some point between the laying of the charges and the determination of guilt. A stay can be temporary or permanent.

² Questions have been raised about whether CPIC consistently includes information on specific conditions of the recognizance as opposed to the general requirement to keep the peace and be of good behaviour. (See; Meredith 1995).

Considerations For A Coordinated Community Response:

1. In your community what efforts are being made to empower victims to take appropriate steps to protect themselves in the event of a protection order breach whenever possible? For example, are police, Crown, Corrections or victim services providing victims with information on how to report a breach? Are victims being encouraged to obtain a copy of the protection order to present it to police responding to a reported breach? Are victims being informed of the degree of risk involved? Are they being assisted to develop a safety plan?
2. Are police and Crown responding promptly to reported protection order breaches in your community? Are these calls treated as priority by dispatchers? Are breach charges relatively common?
3. What steps can be taken to assist justice system personnel to distinguish between breaches of protective conditions in spousal and non-spousal cases and to appropriately assess the risks involved? For example, in cases where a breach is reported, what steps can be taken to help police identify known risk factors and communicate them to Crown counsel. What steps can be taken to encourage Crown counsel to consistently use this information to recommend detention?
4. Is the number of stays of proceedings in violence against women cases a concern in your community? Are peace bonds being sought and charges dropped because the victim is afraid or otherwise unwilling to testify? Is the use of a peace bond in this type of situation an effective way to protect the victim? What are the alternatives?
5. Should Criminal Code amendments be considered to help facilitate the effective enforcement of protection orders? For example, should there be an amendment to the Criminal Code which puts the onus on the accused to justify his release following the initial arrest in vawir cases or after an arrest for breaching a protection order?

Can Community Coordination for Women's Safety help?

- If your community or region could benefit from assistance related to coordination on this issue, please contact either **Regional Coordinator**
- If your community would like more information regarding policy related to this issue or assistance with promoting action at a provincial or federal level on this issue, please contact the **Issues Analyst**
- You may also wish to contact our **Managing Partner** for other information about the project

PROJECT STAFF

Michelle Novakowski, Regional Coordinator
250 751-2881 ~ micheno@telus.net

Gail Edinger, Regional Coordinator
250 395-7727 ~ rosebud@bcinternet.net

Gisela Ruebsaat, Issues Analyst
250 592-3073 ~ gisela2@horizon.bc.ca

Laura-Ashley Wright, Administrative Coordinator
604 633-2506 ext. 15 ~ ccws@endingviolence.org

MANAGING PARTNER

**BC Association of Specialized Victim Assistance
and Counselling Programs**
604 633-2506 ~ bcasvacp@endingviolence.org

REFERENCES:

1. Alberta Justice Public Security Division. (1996) *Court Preparation/Restraining Order Program for Victims of Domestic Assault Final Report: Year One*. Alberta Justice, Calgary Alta, [date and authors not provided.]
2. Barrett, Joan. (2001) *Balancing Charter Interests Victim's Rights and Third Party Remedies*. Carswell, Scarborough Ont.
3. Begg, Kevin. (March 30, 1998) *Letter to Police re: Changes to the Protection Order Registry*. Ministry of Attorney General Police Services Division, Victoria B.C.
4. Criminal Justice Branch, Ministry of Attorney General. (Oct. 1,1999) *Crown Counsel Policy Manual Core Policy: Charge Approval Guidelines (CHA 1)*. Ministry of Attorney General, Victoria B.C.
5. Criminal Justice Branch Ministry of Attorney General. (Oct. 1,1999) *Policy on Recognizances (REC 1)*. Ministry of Attorney General, Victoria B.C.
6. EKOS Research Associates Inc. (December 2000) *New Identities for Victims of Abuse: Client Survey Final Report*. NIVA Human Resources Development Canada, Ottawa Ontario.
7. Holm, Michelle. (December 1994) *An Analysis of Stays of Proceedings: Violence Against Women in Relationships January and June 1994*. Vancouver Police Department, Vancouver BC.
8. Jaffe, P., Wolfe, D., & Wilson, S. (1990) *Children of Battered Women*. Sage Publications Inc., Thousand Oaks California.
9. Joint Committee on Domestic Violence. (1999) *Working Towards a Seamless Community and Justice Response to Domestic Violence: A Five Year Plan for Ontario*. Joint Committee on Domestic Violence, Toronto. Ont.
10. Legal Services Society of B.C. (March 25, 1999) *No Contact Orders Explained*. Legal Services Society, Vancouver B.C.
11. Legal Services Society of B.C. (1997) *Peace Bonds, Restraining Orders, and No-Contact Orders*. Legal Services Society, Vancouver B.C.
12. Lloyd, Tracy. (2000) *Women's Perspectives on the Zero Tolerance Policy and the Criminal Justice System in Manitoba*. Fort Garry Women's Resource Centre, Winnipeg Manitoba.
13. Meredith, Colin. (1995) *Review of the Use and Effectiveness of Judicial Recognizance Orders and Civil Restraining Orders*. Department of Justice, Ottawa Ont.
14. Ministry of Attorney General. (July 2001) *For Your Protection: Peace Bonds and Restraining Orders*. Ministry of Attorney General Community Justice Branch Victim Services Division, Victoria BC. [draft only]
15. Ministry of Attorney General. (September 27, 2000) *More Protection for Victims of Domestic Violence*. Ministry of Attorney General News Release, Toronto Ont.
16. Ministry of Attorney General Community Justice Branch. (March 16, 1998) *Information Sheet for Victim Services: Enhancement to the Protection Order Registry*. Ministry of Attorney General, Victoria B.C.
17. Ministry of Attorney General Police Services Division. (April 1999) *Survey of Spousal Assaults Reported to Police in 1995 in British Columbia*. Ministry of Attorney General, Victoria BC.
18. Ministry of Attorney General (May 2000) *Protection Order Registry Enforcement Matrices*. Ministry of Attorney General, Victoria B.C.
19. Ministry of Attorney General. (2000) *Violence Against Women and Children Part 1 Violence Against Women In Relationships Policy*. Ministry of Attorney General, Victoria B.C.
20. Nova Scotia Department of Community Services. (October 2000) *Maxwell/George Case Review*. Nova Scotia Department of Community Services, Halifax Nova Scotia.
21. Nova Scotia Department of Justice Victims' Services Division. (June 2001) *A Review of the Effectiveness and Viability of Domestic Violence Interventions as an Adjunct to the Formal Criminal Justice System*. Nova Scotia Department of Justice, Halifax Nova Scotia.

22. Nova Scotia Department of Justice. (September 2000) *Department of Justice Program Review into the Deaths of Lori Lee Maxwell and Bruce Allan George*. Nova Scotia Department of Justice, Halifax Nova Scotia.
23. Plecas, Daryl et al. (March 2000) *Reticence and Re-assault among Victims of Domestic Violence in Abbotsford BC*. Ministry of Attorney General, Victoria BC.
24. Pratt, James. (1999) *Vancouver's Domestic Violence Unit: A Case Study*. Family Services of Greater Vancouver/Vancouver Police Department, Vancouver BC.
25. R.C.M.P. E Division. (December 2000) *RCMP Policy Violence in Relationships/ Violence Against Women in Relationships*. R.C.M.P. E Division Victoria BC.
26. Richard, Catherine. (November 1996) *Violence and Intimidation Against Women in Relationships January and July 1996*. Vancouver Police Department. Vancouver BC.
27. Sabourin, Peter. (April 1996) *Violence and Intimidation Against Women in Relationships January and July 1995*. Vancouver Police Department, Vancouver BC.
28. Statistics Canada. (1993) *Survey on Violence Against Women*. Statistics Canada, Ottawa Ont.
29. Varcoe, Colleen Jaffer, Fatima & Kelln, Pat. (2000) *Protecting Women? Women's Experiences of Seeking Protection From Abuse by Intimate Partners*. British Columbia Health Research Foundation, Vancouver B.C. [draft only]