

Judges' Orders Subcommittee*

The subcommittee was perhaps one of the first community multidisciplinary groups to deal with specific legal issues and police enforcement. Participants included a Superior Court Family Justice; a senior member of the Durham Regional Police, who is in fact a lawyer and advises the police on enforcement issues; a Family Court Clinic Assessor who is a facilitator of a male batterers' group; a family lawyer; a Crown attorney; a Victim Witness Co-ordinator; Family Court Onsite Mediation Project Manager; and members of the women survivors' focus group. While these were the primary participants, other community members and services participated from time to time.

Initially the committee discussed the deficiencies of existing Restraining Orders and the ongoing difficulties with police enforcement. Specifically, this included the types of harassing behaviours experienced by women when dealing with custody access issues, the confusion experienced by officers in their interpretation of the Orders, and the limitations of arrest.

Once the problems were defined, the committee reviewed existing case law and legislation to determine if these problems, within the current structure of the court system could be reconciled. Based on the recommendations of the Joint Committee to the Attorney General of Ontario, the committee thoroughly reviewed the pros and cons of "stand alone" restraining orders versus restraining orders that were specifically tied into the Custody Access Order. The first principle that the committee recognized is that an abusive partner has a need to control and when access exchanges are made, risk occurs. Not to address very specific rules of conduct at these points of exchange is, in reality, not to have a restraining order at all as these are the times of greatest risk.

On the surface "stand alone" orders look like they would be more effective and enforceable. They appear to simplify the situation a patrol officer may face, but difficulty arises when CPIC registration lists all orders by date. The officer is more likely to view the most current order as the relevant order for enforcement and in many cases the Custody Access Order may be the most current. Clarification for an Officer may take additional time to confirm the relevant Judge's Order, thus leaving the woman in jeopardy.

In reviewing the role of police enforcement, considerable debate occurred around the use of the terms "molest, annoy, and harass". While there exists case law regarding the definition of each of these terms, police and others found the terms confusing and too vague to be enforceable.

Further to the existing Provincial and Federal legislation and case law for Ontario reviewed around this issue, was the study of other Provinces' legislation around family violence, legislation from other American states as well as Australia and New Zealand.

The following recommendations were developed:

1. There is a need for legislation to define procedures i.e. to obtain specific prohibitive conduct/contact orders on an immediate basis and further to ensure these orders are immediately registered on CPIC. This would mean immediate availability and enforcement of a restraining order on a 24-hour basis.
2. Restraining orders be issued in plain language and be made as specific as possible to the woman's circumstances to ensure there is no confusion in interpretation and enforcement by the officer.
3. Orders be customized to a woman's needs, setting out a specific list of likely behaviours to be prohibited.
4. There is a need for statutory authority for a multidisciplinary approach i.e. lethality/risk assessment by non-lawyers. It is recommended that the courts recognize full credibility and admissibility of that tool.
5. There is a need for a substantive law and rule reform whereby affidavits would specify issues of risk, historic and current, and that a lethality/risk assessment tool be specifically addressed within the statute.
6. The Family Law Rules, Rule 14 (4) be amended to allow urgent motions to grant relief, including restraining orders, in abuse or volatile cases especially just post or at the point of separation.
7. The Family Law Rules, Rule 17 (4) and 17 (5) be amended to expand the duties of a case management Judge to



require a very early review of the issues of lethality/level of risk and the need for provisions of a safety plan to form part of the temporary order.

8. The current climate within the Family Court System is that of "no fault". This assumes, specifically, that each party is on equal footing and that dispute resolution can be applied. Statutes and Rules must recognize and address that the presumption of "no fault" must be suspended and a different analysis must be applied when the conduct of a party is dangerous or toxic.

9. Relief for the breach of restraining order should be included in the order itself so that police officers will have clear direction as to their responsibility of enforcement.

10. Mandatory training be established for the Judiciary, Lawyers, Police Officers and Court Staff specific to the dynamics of violence against women.

Work To Be Done

1. To develop a working model to implement a lethality/risk assessment within the Family Court which would include safety planning.
2. While the committee could submit several models of existing and enforceable restraining orders, it became impossible to develop a model restraining order. This will be the next step of the committee.
3. To continue working with the Lawyers' Working Group and Information Package Subcommittee.
4. To work with the Police Department with respect to the training of officers on enforcement of family court orders.

JUDGES' ORDERS SUBCOMMITTEE - MEMBERSHIP

Justice Margaret Scott

Superior Court Judge, Chair

Staff Sgt. Brian Fazackerly

Durham Regional Police Lawyer

Bev LeMay

Family Court Assessor, Family Court Clinic; Male Batterers' Group Facilitator, Family Services Durham, Region of Durham

Rachel Eynon

Family Lawyer

Debra C.

Focus Group Participant

Penny Contreras

Victim/Witness Coordinator, Ministry of the Attorney General

Janette Watt

B.A., LL.B., Manager of Mediation and Information Services for the Unified Family Court, Oshawa

Kent Saliwonchyk

Assistant Crown Attorney

Deborah Sinclair

M.S.W., Project Resource Person and Community Facilitator

Principal Writers Penny Contreras, Justice Margaret Scott

* 30 resources were reviewed by this subcommittee and will be kept on file until the opening of Luke's Place Resource Centre, where they will be stored permanently.