



Discussion Paper:

*Protection of Victims
of Domestic Violence:
Options for Law Reform
in New Brunswick*



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February 2004

Introduction

In the Government's response to the Minister's Working Group on Violence Against Women, *A Better World for Women* there was an undertaking to initiate a review chaired by the Department of Justice that would look at family violence legislation in other provinces and territories and provide government with options and recommendations on the feasibility of such legislation in New Brunswick.

The Minister's Working Group had expressed interest in legislation enacted in Prince Edward Island. A number of province and territories also have similar legislation and other jurisdictions are at various stages of considering such an approach. They provide new options for women experiencing family violence in addition to the criminal and civil options available. The goal of this consultation is to obtain the views of key stakeholder on whether this approach could work in the New Brunswick, and how it would relate to current services available and other possible approaches.

The traditional approach in domestic violence situations has been two-pronged. In all jurisdictions, the criminal justice system allows for the arrest of those who commit criminal acts and for the laying of charges against them. All jurisdictions promote a similar criminal justice system response, the primary objective of which is the criminalization of spousal abuse. This approach is viewed as providing general deterrence by sending a clear message to society that domestic violence is wrong and a specific deterrence to prevent individuals from committing further acts of abuse.

The other approach is through family law legislation, which typically provides for the victims of family violence to seek no-contact orders from family courts.

Also, throughout Canada, a variety of other approaches and supports to families are being used. These approaches continue to evolve and must rely on rigorous research and evaluation to help them determine the key elements required for an effective response. Some of these approaches currently in use are:

- Domestic Violence Courts have been established which allow court officials who have an understanding of the dynamics of domestic violence to focus on the special nature of these cases. The services of a variety of professionals are called upon to provide a tailored response to the needs of the individuals involved. The specialized services include women's advocacy and child victim/witness program, specialized prosecutorial units, case screening processes and special probation units to deliver court mandated treatment programs.

- Victim Service Programs are in place in all jurisdictions and play a valuable role in these cases including emotional support, assistance with victim impact statements and the court experience, risk assessment, safety planning and referral to a range of supportive agencies.
- Shelters, outreach, advocacy and other support services also play a leading role in emergency response, safety planning, information and referral. Facilities include transition houses and shelters, second-stage housing, safe houses and family resource centers. Often a wide variety of support services are provided to the victim in this safe, temporary living environment.
- Abusive partner intervention programs for men who assault their partners are also found in all jurisdictions with varying degrees of success. Anger management programs have proven to be very ineffective in many cases. Programs that deal with the perpetrator of violence on a more personal level and that are more specifically tailored to their individual needs, are the most effective. The best programs also link to the services offered to the victims to enable victims to make informed choices about their personal safety. Accountability and monitoring mechanisms are also key factors of successful programs.
- Alternative Measures and Restorative Justice process have been used to a very limited extent in a few jurisdictions. They tend to be Crown based referrals rather than police based referral to the alternative process. Those who promote the use of these processes feel that they are useful because they respond to the fact that many couples reconcile. They believe they are conducive to a safe reconciliation in certain cases. However, the use of alternative measures and restorative justice processes has been widely criticized in light of the inherent imbalance of power in most domestic violence situations. Opponents support the criminal justice system as a better way to ensure safety. They believe these processes could expose the victim to an increased risk of being pressured into a situation that could result in further abuse.

In genuinely urgent situations neither the *Criminal Code* nor family law legislation provides quick, easily accessible legal relief. In such situations, often the only practical option for victims of family violence has been to leave the family home and most possessions to the abuser and to seek refuge elsewhere at a transition house or with other family member or friends.

Civil domestic violence legislation like that in place in Prince Edward Island and other jurisdictions creates another option. Under this type of legislation, those experiencing family violence can seek an order, at any time of the day or night,

giving them exclusive possession of the family home and other possessions, prohibiting the abuser from making contact with them, and authorizing police to serve such orders and remove offenders as needed. These “emergency protection orders” are reviewed within a few days and lapse after a short time (30 to 90 days). The idea is that the victim of violence would be in a better position to seek a more permanent remedy under family law legislation while under the protection of the emergency protection order.

The domestic violence legislation has proven very popular with victims and victim advocacy groups. The features that are most often praised are the immediacy of the order and the fact that the victim’s life is not as severely disrupted as it would be if they left their home. However, reviews and evaluations of the various Acts indicate that there has been a low uptake on the Acts’ provisions for a variety of reasons. In addition, opponents have raised safety concerns because of the Acts’ provisions that leave the victim in the home. They fear this promotes a false sense of safety and exposes the victim to potential abuse. A recent study concluded that jurisdictions that have not enacted civil domestic violence legislation should consider whether it is a priority among the range of tools available to respond to domestic violence, given that most remedies provided by the legislation are already available and that utilization rates may be low.

This discussion paper outlines the state of the law in New Brunswick, in terms of remedies available to victims of family violence, and then outlines additional remedies that have been utilized in other jurisdictions including those contained in civil family violence legislation. Throughout the document consultation questions are posed for which the input of stakeholders is sought. Based on the consultation a final report will be prepared with recommendations that are well informed and likely to reflect or generate a consensus on next steps in New Brunswick in terms of possible law reform.

Consultation Questions

- 1. How effective are the non-criminal justice options described above that are in use in New Brunswick and in other jurisdictions? Are there other ways we should deal with these complex social issues?*

I. Legal options currently available in New Brunswick

A. Criminal Code of Canada

In Canada, criminal law is a matter within the jurisdiction of the national Parliament. Accordingly, there is one *Criminal Code* that applies throughout Canada.

Charges:

By virtue of its nature, the *Criminal Code* is primarily directed at prohibiting behaviours that are offensive to society, and punishing and attempting to rehabilitate those who commit offences. The criminal law is, of course, an important tool in the ongoing effort to eliminate family violence. Current police and prosecutions policies reflect the belief that it is important that the perpetrator and the victims get the message that family violence is criminal activity as well as morally repugnant and, in some situations, arrests and/or charges can deter and prevent future acts of violence. At the same time it is important to realize that personal and social relationships are fundamentally changed when we rely on the criminal law to deal with complex social issues.

The most common offences used in the family violence context include:

1. assault, assault with a weapon, assault causing bodily harm and aggravated assault;
2. sexual assault, sexual assault with a weapon, sexual assault causing bodily harm and aggravated sexual assault;
3. criminal harassment or “stalking”.
4. threats

Unfortunately, charges of abduction, manslaughter and murder are also not unheard-of in the family context.

Of course, the reactive and punitive approach of the criminal justice system provides minimal relief to victims of family violence, and no appreciable immediate relief. In a very real sense, the victim is not a party to a criminal proceeding. The process is conducted on the principle that the criminal behaviour is an affront to the state.

To a greater or lesser extent Canadian jurisdictions have explored alternative approaches that are more victim centred or preventive in nature and which fall broadly into the categories such as therapeutic, public education, and community based support.

Following are data collected on woman abuse in New Brunswick. Similar data is not available on male victims of domestic violence. The data indicate the number of reported incidents and how they have been dealt with. For municipal forces, data on location of the incidence is also available and indicates that 50-60% of incidents occurred in the joint residence of the accused and victim.

Woman¹ Abuse Statistics*

Year	Incidents Reported	Number Founded Incidents	Cleared by Charge	Cleared by Peace Bond	Cleared Otherwise	Outstanding at time of Report
2000	932	919	589	111	75	144
2001	1003	994	668	124	74	128
2002	876	873	612	87	95	79

*Source: New Brunswick Family Violence Criminal Justice Statistical Report 2000 and 2001

¹ Women in an intimate relationship.

Location of the Crime*

Year	Residence of Accused & Victim	Residence of Victim	Residence of Accused	Public Location	Other
2000	250 (61%)	91	10	48	13
2001	232 (51%)	134	11	57	18
2002	196 (51%)	111	15	58	6

*Source: New Brunswick Family Violence Criminal Justice Statistical Report 2000 and 2001 – Based on Municipal Police Information only

Consultation Questions

1. *Is the Criminal Justice System an effective tool in dealing with domestic violence? What are its weaknesses?*

B. Preventative Measures:

Peace bonds:

Section 810 of the Criminal Code, as an example of a measure directed at prevention, provides for applications for “peace bonds”. New Brunswick statistics indicate that about 12% of founded reported incidents of woman abuse in 2001 were resolved by way of a peace bond.

Section 810 of the Code provides that “an information may be laid... by any person who fears that on reasonable grounds that another person will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property.” A provincial court judge will conduct a hearing to determine whether evidence indicates that the informant had reasonable grounds for fear. The guilt or innocence of the accused is not in issue, and the individual against whom the Information was laid enters no plea. This is not a charge.

If the judge determines that the complainant had reasonable grounds for fear, the judge can order the defendant to enter a peace bond to keep the peace and be of good behaviour for up to one year. Refusal can result in prison for up to one year. A person who enters into a peace bond and then breaches its conditions can be charged under the Code. In the family violence context, a peace bond often includes a no-contact order and may include prohibitions on alcohol or drug consumption.

A recent study by the federal Department of Justice found:

- The major hurdle for battered women who wish to obtain peace bonds is the processing time.
- Peace bond applications have been greatly reduced by emergency protection order legislation in Manitoba.
- The pro-arrest and charge policies of police and Crown are the greatest factor in the decision not to use peace bonds.
- Police officers are reluctant to enforce the peace bonds when they believe the applicant has allowed contact and or home visitation contrary to the conditions of the order.
- The absence of a reliable national registry or tracking system hampers police enforcement efforts. They may not have ready access to the terms of the bond. It is not on CPIC (Canadian Police Information Centre) unless it was accompanied by an additional criminal charge.

Firearms prohibition orders:

Subsection 111(1) of the *Criminal Code* provides that a peace officer may apply to a provincial court judge for an order prohibiting someone from possessing any

firearm, ammunition or explosives. If there are reasonable grounds to believe that it is the interest of the safety of any person, the judge must make a prohibition order.

Other Options:

Other preventive measures can be taken at various stages in the criminal charge process, even before a charge is laid. For example police can incarcerate a suspect prior to laying formal charges. However, the courts must deal with the suspect within set constitutional limits (usually, 24 hours).

After a charge is laid and if the Crown wishes to keep the suspect incarcerated pending his trial, the matter is dealt with at a bail hearing. At that time, the courts may remand the accused in custody or may impose conditions for their release. A common condition is that the accused not communicate or have contact with the complainant. If the accused does not respect the conditions imposed, his bail may be revoked and he could be incarcerated until his trial.

As Part of a Sentence:

At the end of the criminal justice process, the court will sentence the accused if s/he is found guilty. At that time, the court may also impose preventive measures as part of a probation order, conditional sentence, or conditional discharge. In all of these sentence types, the conditions may include a no-contact order, if appropriate in the circumstances. Failure to comply with the conditions can result in further charges, or in the case of the conditional sentence, jail time for the remainder of the sentence period. Probation orders can have a life of up to 3 years and can be paired with other sentence types including incarceration.

Consultation Questions

- 1. Are these prevention measures effective in domestic violence situations?*
- 2. Do the preventative measures reflect and accommodate the reality that a large percentage of the victims and accused continue in their relationship after the interventions?*
- 3. Are there other means of prevention that you are aware of and that could be explored?*

C. Civil remedies in New Brunswick:

In general, family law¹ and civil law remedies are matters of provincial jurisdiction in Canada. Remedies vary from province to province.

The key statute in New Brunswick is the *Family Services Act* (the FSA), which governs family relations generally in the province, from adoption to child protection, spousal and child support to custody and access. While criminal matters are mostly dealt with by the Provincial Court of New Brunswick, family and civil law matters go before the Court of Queen's Bench. The Provincial Court sits at 14 permanent and a number of satellite sites, and sits on weekends and holidays as needed, while the Court of Queen's Bench sits at eight sites and only Monday through Friday.

Child/adult protection matters:

Under the FSA, the Minister of Family and Community Services (the Minister) has broad powers to intervene with respect to situations involving domestic violence. However, the Minister can only intervene by placing a child or disabled or senior adult in the Minister's care. This is limited to situations where the neglect or abuse is such that the security or development of the victim cannot be protected adequately otherwise.

The Minister's intervention on behalf of a child can include:

- a. Under a supervisory order (sec. 54), the guardianship and custody of the child remains with the parents, but the Minister has access to the child and to the home in order to supervise the conditions of the order. The order can be for a period up to six months. However, an order may be extended for further periods up to six months each. In such situations where the Minister allows the child to remain in his own home, the Minister can also apply to the court for a protective intervention order (sec 58) which can include an order to an individual to cease to reside in the same premises in which the child resides, and to refrain from any contact or association with the child. This order can be for up to 12 months with the possibility of a further 12 months.
- b. Under a custody order (sec 55), the custody, care and control of the child is transferred to the Minister for a period up to six months. A custody order may be extended for additional periods up to six months each, up to a maximum of twenty-four consecutive months.
- c. A guardianship order (sec 56) has the effect of permanently transferring the guardianship of a child to the Minister, including the custody, care and control, and all parental rights and responsibilities with respect to the child.

¹ In the family law sphere, Parliament does have jurisdiction to legislate respecting marriage and divorce.

In 2000-2001 there were 917 court dispositions with respect to child protection.

It would appear that the provisions of the FSA dealing with children are closer to the ideal sought with respect to the overall problem of domestic violence. However, those provisions dealing with children do not directly address the problem with respect to domestic violence aimed at an adult relationship partner. When neither children nor vulnerable adults are involved, the intervention options are more limited.

Restraining orders:

Section 128 of the FSA provides for restraining orders:

Upon application of a person who is living separate and apart from his spouse a court may make an order restraining the spouse of the applicant from molesting, annoying, harassing or interfering with the applicant or any children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

A restraining order can be applied for as a stand alone order. Much more commonly, however, it is brought at the same time as an application for the court to deal with matters of custody/access, spousal or child support, and/or marital property.

In 2000-2001 there were 64 restraining orders issued by the court.

Exclusive possession of marital home and/or household goods:

When considering an application for support of a dependant under the Family Services Act [sec 116(1) (d) & (f)], a court can order that one spouse be given exclusive possession of a marital home for a specified period of time. The court can also order that household goods remain in the home.

Other orders under the FSA:

When making a custody order, the court can order (sec 132) that any person can not enter any premises where a specified child resides, and/or that any person may not make contact with that child or with the person who has custody of that child. If necessary, the court may order that a person enter into a recognizance to further insure that the order is obeyed.

Contempt:

Section 130.7 of the act provides for a maximum fine of \$1000 and up to 90 days in jail for willful contempt or resistance to any orders of the Court in respect of custody or access to a child.

Marital Property Act:

The *Marital Property Act* of New Brunswick governs the division of marital property between married persons. Applications for remedies under this Act are brought before the Court of Queen's Bench. A major shortcoming of this legislation is that it does not apply to unmarried domestic partners.

This legislation provides legal protection to a spouse with respect to marital property. It allows a judge to divide property to reflect the parties' interest in the property even when their name is not included in the title documents. This legislation is an important tool for victims of domestic violence. The Act includes provision (sec 23) for the issuance of an order granting exclusive possession of property.

In 2000-2001 there were 64 orders related to property issued.

Interim orders:

In the case of all three major remedies described above (support, custody/access and marital property) provisions exist for interim orders to be issued by the court. This allows the granting of temporary relief until the court can deal with all questions on a final basis.

Domestic Legal Aid:

The Department of Justice, together with the Law Society of New Brunswick, has established a domestic legal aid program that provides important services to victims of spousal abuse or domestic abuse, including legal advice and representation in relation to issues of support, custody/access, protection by restraining order, interim relief, variations, and, in some cases, division of marital property. The Department of Justice provides the screening for Domestic Legal Aid.

Clients in urgent situations will see a social worker within one to two days, and clients referred by police or a transition house will be seen within ten to fourteen days. Clients can find themselves before the Court of Queen's Bench seeking interim relief within another few days. The Domestic Legal Aid sector of Legal Aid New Brunswick has seven full and two half time lawyers. In addition, when necessary, certificates are issued to the private lawyers to provide legal services to clients. In 2001-2002 88 certificates were issued.

Consultation Questions

1. *To what extent are civil remedies available under the law today helpful to victims seeking to prevent violent incidents and/or escape a violent partner?*
2. *How might existing remedies be made more helpful?*
3. *Are there other civil remedies that we should consider?*

II. Civil domestic violence legislation in other Canadian jurisdictions

Five jurisdictions currently have some form of legislation aimed at the prevention and intervention for domestic violence. Two others have legislation that is not yet proclaimed. The purpose of the legislation is predominantly to assist victims in gaining quick and effective access to the justice system in the hopes of early intervention. The legislation creates a framework to facilitate the process. Applications are made to Justices of the Peace (JPs) who are considered to be more readily accessible than judges.

Most jurisdictions in Canada have legislative provisions for the appointment of JPs which are quasi-judicial officers charged with a variety of responsibilities conferred on them by a number of different statutes. New Brunswick does not have JPs. Should New Brunswick develop domestic violence legislation, consideration will have to be given as to who would perform the role covered by JPs in other jurisdictions. Are their officials in the current system who are sufficiently accessible to perform this role in emergency situations or will it be necessary to create an office similar to that of the JP in other jurisdictions?

Definition of domestic violence in domestic violence legislation

All jurisdictions with the legislation consider an act of domestic violence or family violence to have been committed whenever:

1. any intentional or reckless act or omission causes bodily harm or damage to property;
2. any act causes a reasonable fear of bodily harm or damage to property is threatened or committed;
3. any person is forcefully confined; or
4. any person is sexually abused by a partner.

Some jurisdictions also include emotional and psychological abuse, the threat of sexual abuse, and the deprivation of the necessities of life in their definitions.

Emergency orders:

Domestic violence statutes all provide for emergency orders. While some statutes provide a more extensive list of provisions that can be ordered by way of emergency order, some are more basic. Depending on the jurisdiction, an emergency order may contain provisions:

1. granting the victim exclusive occupation of the residence;
2. directing a peace officer to remove the respondent from the residence;
3. directing a peace officer to accompany a specified person to the residence to supervise the removal of personal belongings;
4. granting the victim temporary possession of specified personal property (such as keys, vehicle, credit cards);
5. restraining the respondent from taking or tampering with specified property or from cutting off utilities to the residence;
6. restraining the respondent from further acts of domestic violence;
7. banning publication of the name and address of the victim;
8. prohibiting the respondent from following the victim or any other person;
9. prohibiting the respondent from contacting the victim or others;
10. prohibiting the respondent from attending any location frequented by the victim;
11. ordering the respondent to surrender all weapons to a peace officer; and/or
12. awarding temporary custody of any children to the victim or another person.

The majority of the jurisdictions also include a provision that allows the JP to add any provision thought necessary for the protection of the victim or any other persons in the victim's care.

In most jurisdictions, applications are made to a JP who is on call 24 hours a day. Some also allow applications to be made in person to a JP or a judge, during regular court hours. This, however, is unusual and most applications are made by phone with the assistance of police or victim services personnel.

In deciding whether or not to grant an order, the JP or judge must determine that domestic violence has occurred according to the definition in the legislation and that the situation is serious *or* urgent enough to merit granting an emergency order. The history of violence by the respondent against the victim must also be considered. (The Yukon has a slightly broader basis for assessment. The JP must determine that domestic violence has occurred *or is likely to occur*. Manitoba differs significantly in that a JP need only determine that the respondent is stalking or subjecting the victim to domestic violence and will continue to do so.)

Some jurisdictions do not provide for a respondent to be notified that an application has been made against him or her. The application is heard *ex parte* (in the absence of the respondent) and without notice and the respondent is simply served with the order once it is granted. However, when a hearing to alter an order is requested by either party or, if a judge orders a rehearing, both parties are notified.

Emergency orders last for 30 days in some jurisdictions, up to one year in others, and indefinitely in Manitoba and the Yukon.

Once an order has been granted, it is sent to the courts to be confirmed, varied or terminated. Some jurisdictions hold a hearing for the confirmation of an order. Others have a judge examine the evidence in chambers. In some cases, the order is simply passed on to the courts with a date set for review at the end of a specified period. Either party may apply to the courts during this period to have an order altered or terminated. If no application is made during this time, a hearing is held (after it expires) in order to confirm, terminate or vary the order. If, at the initial confirmation hearing, the judge is not satisfied that there was enough evidence to merit granting an order, a rehearing is directed. A summons is issued for the respondent and the victim is given notice. The victim is allowed to attend and/or participate in the proceedings either personally or through an agent.

In cases where the court confirms the order, either party may apply for a review, where the order may be varied or terminated at a later date. Both the victim and the respondent are notified of the date of the hearing and are allowed to participate in the proceedings.

Statistics

The following tables show the available data on the use of emergency orders in 4 jurisdictions. In all of these jurisdictions, the overwhelming majority of applicants are female and their relationship to the respondent is most often that of spouse or common law partner. Only PEI included data on the living arrangements of the victim and respondent. In 92% of cases, those involved were living together at the time of the incident.

Table 1

Prince Edward Island		
	Dec 16, 1996 To Jan 31, 1998	April 1, 2002 To Nov 26, 2003
Emergency Protection Order Applications	59	NA
Denied	12	NA
Granted	47	52
Confirmed by judge	31	52
Varied by judge	2	8

Table 2

Saskatchewan ²				
	Feb. 01, 1995 To Mar. 31, 1996		Jan.1, 1997 To Dec. 31, 1997	
	Number	Percentage	Number	Percentage
Emergency Intervention Orders	295	--	420*	--
Request for info	-		25	6
Lost call	-		1	<1
Request for an order	-		394	94
Granted	260		315**	84
Confirmed by judge	211***	82	293	89
Unconfirmed	32***	13	21	6
Other	13***	5	17	5

* Based on data from JP files.

** In addition to the 315 orders granted by Justices of the Peace, the courts granted an additional 16 bringing the total number granted to 331.

*** These numbers come from the 256 court files located. Of these, 8 victims and 13 respondents requested reviews, which resulted in 10 orders being revoked or terminated and 5 amended. (The other 6 applications were either refused or the outcome was unknown.)

Table 3

Alberta

Emergency Protection Orders	2001-02	2002-03
Applications to JPs- Granted	110	109*
Not Granted	29	23*
Applications to QB Judges	21	19

* 10 months only

² All data is derived from the *Victims of Domestic Violence Act: Working Document*. Prairie Research Associates Inc., September 1996 and *A Further Review of the Saskatchewan Victims of Domestic Violence Act*. Prairie Research Associates Inc., February 1999.

Table 4

YUKON

	Year 1 99-00	Year 2 00-01	Year 3 01-02	Year 4 02-03
Emergency Intervention Orders	31	20	5	16
Reviewed by Supreme Court	5	3	2	3

Usage rates in jurisdictions with domestic violence legislation have been low compared to reported incidents of domestic violence. Studies would suggest that the reasons include the lack of training of criminal justice officials, the lack of public awareness of the provisions, confusion over the role the legislation plays in conjunction with the criminal justice system, and the processing time. Many evaluators have suggested that more work is needed to fully understand why the provisions are used in such small numbers compared to the reported incidents of domestic violence.

Reviews have also encountered some evidence that the domestic violence legislation provisions are being used as substitutes for the criminal justice system rather than as a compliment, as was intended.

Victims and their advocates that have been included in reviews tend to view the legislation favourably. They cite the advantages of the immediacy of the emergency orders and the fact the legislation brings together in one piece of legislation many of the most significant remedies.

Consultation Questions

1. Are emergency orders under a Domestic Violence Act better protection than the existing restraining orders under the *Family Services Act*? Why? What are the weaknesses of the restraining orders?
2. If New Brunswick were to amend its law to provide for emergency orders similar to those available elsewhere:
 - a. Given that the criminal justice system in New Brunswick does not have JPs, who should receive applications for orders: Provincial Court judges? Newly appointed JPs? Queen's Bench judges?

- Other regional court officers? Other officials? What are the pros and cons of the various options?
- b. Should emergency orders be restricted to use in situations where family violence has actually occurred or should they also be allowed in situations where violence is threatened? Or where a person is subjected to emotional abuse? Or economic abuse?
 - c. Should legislation require that respondents (usually the husband) be notified of an application before the application is heard?
 - d. Should victims be provided assistance in applying for orders? If so, by police? Counsel provided under Domestic Legal Aid? Victim Services personnel? (What are the pros and cons associated with the various options?)
 - e. Should counsel be available to respondents?
 - f. Should victims be able to get an order for custody and access of children as part of the emergency order?
 - g. What should be the duration of an emergency order?
 - h. Who should review emergency orders for confirmation or variation?
3. In light of the fact that the majority of domestic violence occurs in the shared home of the accused and the victim, do you have concerns that such emergency orders will give a false sense of security? Does the rural nature of New Brunswick intensify this risk? Should the legislation attempt to define situations in which a victim of family violence should not be encouraged to remain in their family home. What else can be done to minimize the risk?

Victim Assistance Orders and special warrants:

Most Domestic Violence Legislation contain provisions for Victim Assistance Orders (VAO), also known as Intervention or Prevention Orders. These order are similar to emergency orders but of a longer duration. Applications for these orders are made directly to the courts (either to a judge or to a JPs housed at the court location) and the process usually requires a lawyer. In most cases VAOs contain similar clauses as emergency order as well as a number of other provisions with the intent to address longer-term issues.

In addition to the provisions possible under an emergency order, a VAO may contain clauses:

1. requiring the respondent to pay compensation for monetary losses due to domestic violence;
2. requiring or recommending the respondent or other family members to receive counseling or therapy;
3. setting out child access arrangements;

4. authorizing the seizure of any property used in the furtherance of domestic violence or stalking.

Also available under some legislation is a special warrant (a Warrant Permitting Entry, a Warrant to Authorize Entry or a Warrant of Entry). A JP may issue a warrant permitting entry by a peace officer if the JP believes that the applicant has been denied access to a family member, a cohabitant or another specified person who may be a victim and that this person is located at the location to be searched. It is to be used in situations where it is thought that the victim cannot act on her or his own behalf. The warrant permits an authorized person to enter and search the location named in the warrant and to examine, assist and remove the victim if necessary. Two jurisdictions also allow the removal of any evidence that indicates victimization.

Statistics

Victim Assistance Orders and the available warrants are requested much less frequently than emergency orders. It appears this is due to a lack of knowledge among police, victim services and lawyers about these alternatives and the fact a lawyer is usually required (legal aid is usually not available). Statistical data shows that there has been only one application for a warrant in Canada, which was subsequently issued. With regard to Victim Assistance Orders, PEI has had a total of seven applications in just over four years. The Yukon has had only one application in two years. Alberta and Saskatchewan had six and five applications, respectively, during a one-year period. On average, applications for these orders are granted in 84% of cases.

Who can apply

Generally, the legislation allows a spouse or former spouse or another family member (or their agent with consent) to apply for an emergency order, provided they are living with or have lived with the respondent. Those living together in an intimate relationship may also apply. Coverage is specifically extended to same-sex partners in some jurisdictions. Most of the legislation also allows persons who are the parents of a shared child to apply, regardless of their marital status or if they have ever lived together.

Punishment

Some statutes make it a provincial offence to violate an order under the statute, while other jurisdictions charge offenders with an offence under section 127 of the *Criminal Code* which is the general provision for disobeying an order of the court.

Added provisions for the protection of the victim

Two jurisdictions provide expressly for special measures that peace officers may take to protect the victim. They state that peace officers are authorized to take the necessary steps to enforce compliance. These may include arrest (without warrant) and/or seizure of property.

Consultation Questions

1. Should New Brunswick law be amended to provide for Victim Assistance Orders as are available elsewhere? If so:
 - a. What would be the purpose of the orders and what range of provisions should they contain?
 - b. Who should receive applications for orders?
 - c. Who should assist victims in applying for the orders: Police? Lawyers provided under Domestic Legal Aid? Victim Services personnel?
 - d. Should lawyers be available to the respondents?
 - e. Should orders be reviewed for confirmation or variation and by whom?
 - f. Since they are rarely used in other jurisdictions, what could we do differently to make them more useful?

Conclusion:

Across Canada, a variety of approaches have been taken to deal with the complex social issues involved in domestic violence. Domestic Violence Legislation is a recent addition to the approaches being taken or considered. The goal of this consultation is to obtain the views of key stakeholder on whether this approach could work in the New Brunswick, and how it would relate to current services available and other possible approaches.

Consultation Questions

1. Should the development of domestic violence legislation be the priority approach to enhancing New Brunswick's response to domestic violence? Are there other priorities?

