

**Research Report on the implementation of section 16 of  
the *Family Homes on Reserves and Matrimonial  
Interests or Rights Act***

**Presented to the Centre of Excellence for Matrimonial  
Real Property**

**March 4<sup>th</sup>, 2016**

## TABLE OF CONTENTS

|     |   |    |
|-----|---|----|
| 1.  | Introduction.....   | 4  |
| 2.  | Newfoundland and Labrador.....  | 5  |
| 2.1 | Appointment of designated judges by the province .....                                      | 5  |
| 2.2 | Current process implemented by the province .....   | 5  |
| 3.  | Nova Scotia .....   | 6  |
| 3.1 | Appointment of designated judges by the province .....                                      | 6  |
| 3.2 | Current process implemented by the province .....   | 7  |
| 4.  | Prince Edward Island.....   | 8  |
| 4.1 | Appointment of designated judges by the province .....                                      | 8  |
| 4.2 | Requirements prior to implementing new sets of rules .....                                  | 8  |
| 5.  | New Brunswick .....   | 9  |
| 5.1 | Appointment of designated judges by the province .....                                      | 9  |
| 5.2 | Challenges in appointing designated judges .....  | 9  |
| 5.3 | Challenges faced by the province in establishing forms and/or procedures for the EPOs.....  | 9  |
| 5.4 | Number of EPO applications and successfully issued EPOs by the courts in the province ..... | 10 |
| 5.5 | Police Forces in New Brunswick and implementation of EPOs .....                             | 10 |
| 6.  | Québec.....   | 10 |
| 6.1 | Appointment of designated judges by the province .....                                      | 10 |
| 6.2 | Rules and regulations .....   | 10 |
| 7.  | Ontario.....  | 12 |
| 7.1 | Appointment of designated judges by the province .....                                      | 12 |
| 7.2 | Current process implemented by the province .....   | 12 |
| 7.3 | Is the province considering the appointment of designated judges.....                       | 12 |

|      |  |    |
|------|--|----|
| 8.   | Manitoba.....  | 12 |
| 8.1  | Appointment of designated judges by the province .....                 | 12 |
| 8.2  | Current process implemented by the province .....                      | 12 |
| 8.3  | Is the province considering the appointment of designated judges.....  | 13 |
| 9.   | Saskatchewan .....   | 13 |
| 9.1  | Appointment of designated judges by the province .....                 | 13 |
| 9.2  | Current process implemented by the province .....                      | 13 |
| 9.3  | Is the province considering the appointment designated judges.....     | 14 |
| 10.  | Alberta.....   | 15 |
| 10.1 | Appointment of designated judges by the province.....                  | 15 |
| 10.2 | Current process implemented by the province.....                       | 15 |
| 10.3 | Is the province considering the appointment designated judges .....    | 16 |
| 11.  | British Columbia .....   | 17 |
| 11.1 | Appointment of designated judges by the province.....                  | 17 |
| 11.2 | Current process implemented by the province.....                       | 17 |
| 11.3 | Is the province considering the appointment of designated judges ..... | 17 |
| 12.  | Conclusion.....  | 18 |

## 1. INTRODUCTION

The Centre of Excellence for Matrimonial Real Property (COEMRP) is an arm's length First Nation organization established to assist communities in developing their own matrimonial real property law; provide information on the protections and rights available to individuals and families living on reserve; assist with implementing the provisional federal rules; and provide research on alternative dispute resolution mechanisms. The COEMRP undertook a research project that examines the implementation of emergency protection orders that may be obtained pursuant to the provisional federal rules of the *Family Homes on Reserves and Matrimonial Interests or Rights Act (Act)*. These emergency protection orders allow a court to order that a spouse or common-law partner be excluded from the family home on an urgent basis in situations of family violence.

The provisional federal rules in sections 12 to 52 of the *Act* came into force on December 16, 2014.

Pursuant to section 16 of the *Act*, a designated judge of the province where the family home is situated, following an *ex parte* application, may make an emergency protection order, for up to 90 days, if family violence has occurred and if there is a serious or urgent situation that requires an immediate response to protect a person from the risk of harm or property from the risk of damage. Subsection 16 (5) sets out the provisions that a judge may incorporate in an emergency protection order, for example a peace officer to remove the applicant's spouse or common-law partner and/or prohibit others from returning to the home unescorted for the duration of the order.

Under the *Act*, provinces and territories have been provided with the power to authorize certain persons to act as "designated judges". A "designated judge", for the purpose of the emergency protection orders in sections 16 to 19 of the *Act*, means a) a provincial justice of the peace appointed by the lieutenant governor in council of the province or territory, b) a judge of a superior court in a province or territory, or c) a judge of the provincial or territorial court, as authorized by the lieutenant governor in council of the province or territory to act for these purposes.

The *Act* provides for the use of designated judges to allow an immediate response where applications are made for emergency protection orders. The possibility of designated judges from various levels of court ensures that applicants in each province and territory have access to existing provincial or territorial frameworks. The use of designated judges also ensures that the necessary conditions are in place to meet the requirements of judicial independence.

Finally, under the *Act*, the lieutenant governor in council may make regulations that will aid in carrying out the purposes and provisions of the *Act*.

The present research report will address the status of the implementation of section 16 of the *Act* by the provinces.

## 2. NEWFOUNDLAND AND LABRADOR

The province of Newfoundland and Labrador has not appointed designated judges in order to implement section 16 of the *Act*.

### 2.1 Appointment of designated judges by the province

The Department of Justice and Public Safety of Newfoundland and Labrador is considering the appointment of designated judges and implementing section 16 of the *Act*.

However, the province is at an early stage in the process and no clear direction has been received to date. The Province is currently working with the Rules Committee of the Supreme Court and the Provincial Court of Newfoundland and Labrador to determine the most appropriate level of court to hear emergency protection orders under the *Act*. The Committee is also assessing if any rules and procedural changes would be required prior to appointing designated judges.

The Committee will then provide recommendations to the government on the need for appointing designated judges and on the process required in order to implement section 16 of the *Act*.

### 2.2 Current process implemented by the province

The province of Newfoundland and Labrador provides rules and regulations in cases of domestic violence that are very similar to section 16 of the *Act*. The province has its own established Emergency Protection Order (EPO) process. It is a court order that can be granted in the event of family violence. This information is available on the Supreme Court of Newfoundland and Labrador website:

*To obtain an EPO, the applicant needs to:*

- *Have lived in a conjugal relationship with the violent person, or*
- *Have had a child with the violent person.*

*People who are married, common law or are part of a same-sex couple can apply for an EPO under the Newfoundland and Labrador legal system. An EPO can allow police to remove an alleged abuser from the home, take away any firearms or other weapons, give the applicant temporary custody of the home and children, and other conditions that the court deems appropriate. EPOs can be applied for in the following ways:*

- *By police, 24 hours a day*
- *By an individual, during regular court hours*
- *By a lawyer on an individual's behalf, during regular court hours*

*Normally, the judge will decide whether an EPO will be granted within 24 hours of receiving the application. An EPO will not last for more than 90 days, and is not a criminal charge<sup>1</sup>.*

Currently, the province of Newfoundland and Labrador provides rules and regulations in domestic violence cases, even if very similar to the protections under section 16 of the *Act*, they cannot be applied on reserve until the province appoints designated judges.

### **3. NOVA SCOTIA**

The province of Nova Scotia has not appointed designated judges in order to implement section 16 of the *Act*.

#### **3.1 Appointment of designated judges by the province**

The province is not considering the appointment of designated judges at the present time. The Nova Scotia Department of Justice is continuing to communicate with First Nations organizations through its established channels and will continue to monitor and assess the need to designate a judge under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

Matrimonial real property law on reserves in Nova Scotia is currently governed by either a band-enacted matrimonial real property law or by the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act*. At this moment, the councils of 7 of the 13 First Nations in Nova Scotia have enacted or indicated to the Department of Justice their intent to enact their own matrimonial real property laws<sup>2</sup>.

The Department of Justice is continuing to communicate with the Office of Aboriginal Affairs and First Nations communities through its established channels, including the Mi'kmaq–Nova Scotia–Canada Tripartite Forum, to assess any need to designate a judge under section 16 of the federal *Act* for the remaining six First Nations that have not indicated an intent to enact their own matrimonial real property laws.

To date, the Department of Justice has not received any communications from the remaining six First Nations, nor from First Nations women's organizations, indicating an interest in the implementation of section 16 of the *Act*. The Department of Justice is following the lead of First Nations in Nova Scotia and continues to communicate with them about the federal *Act* and the federal emergency protection orders provisions through its established channels.

---

Courts of Newfoundland and Labrador, *Family violence* (n.d.), online:  
<http://www.court.nl.ca/supreme/family/violence.html>

<sup>2</sup> Pictou Landing First Nation; Paqtnkek First Nation; Bear River First Nation; Millbrook First Nation; Glooscap First Nation; Sipekne'katik (Indian Brook) First Nation; and Waycobah First Nation.

### 3.2 Current process implemented by the province

The province of Nova Scotia provides rules and regulations in cases of domestic violence that are very similar to section 16 of the *Act*. The province has its own established Emergency Protection Order (EPO) process.

The Emergency Protection Orders are short term, temporary orders to help protect victims of domestic violence and are made under the Domestic Violence Intervention Act (DVIA) of Nova Scotia.

To apply for an EPO, the victim must be over 16 years old and have been subjected to domestic violence by a person with whom the victim is, or has been, in an intimate relationship and currently living together or having lived together in the past, or have a child or children together, even if they have never lived with each other. These definitions must be considered before an application for an emergency protection order can be approved. Every EPO that is made is reviewed by a Justice of the Supreme Court within 7 days. A victim or person acting on behalf of a victim can apply for an EPO with the approval of a Justice of the Peace, or a designated person.

The designated persons are: peace officers, victim services workers employed by the Nova Scotia Department of Justice, the police, or the Royal Canadian Mounted Police (RCMP), designated employees of a transition house that is a member of the Transition House Association of Nova Scotia.

Applications for an EPO are done over the phone between 9 am and 9 pm every day. Some designated people, like police officers, staff at a transition house or shelter for assaulted women, or victim services workers can apply on the behalf of the victim.

According to information available on Family Law Nova Scotia's website, an EPO can grant the victim:

- *exclusive occupation of the home for up to 30 days;*
- *temporary possession of specified personal property, such as a car;*
- *temporary care and custody of a child to the victim or another person;*
- *can direct a peace officer, such as a police officer, to: remove the respondent from the home, accompany the victim or respondent to the home to supervise removal of personal belongings;*
- *It can direct the person against whom the order is made (the respondent): to stay away from any place identified in the order, not to contact the victim or another person, not to take, sell, or damage property, not to commit any further acts of violence against the victim;*

- *The EPO can also prohibit the publication of the victim's name and address*<sup>3</sup>.

Currently, the province of Nova Scotia provides rules and regulations in domestic violence cases, even if very similar to the protections under section 16 of the *Act*, they cannot be applied on reserve until the province appoints designated judges.

#### **4. PRINCE EDWARD ISLAND**

The province of Prince Edward Island has not appointed designated judges in order to implement section 16 of the *Act*.

##### **4.1 Appointment of designated judges by the province**

The province is currently working toward designating a Justice of the Peace to hear applications for emergency protection orders under the *Act*. The intended process would require that Judges of the Supreme Court Family Division review and confirm the Justice of the Peace's decision and Order.

This process is currently in development and should emulate the current provincial *Victims of Family Violence Act* designations.

The provincial government is in discussion with First Nations representatives concerning the implementation of the *Act* and those First Nations representatives have indicated an interest in developing their own laws, however, the process is currently being delayed.

##### **4.2 Requirements prior to implementing new sets of rules**

The legislation required legal review in order to assess implications for the province. Consultation with First Nations representatives concerning the need and implementation of section 16 of the *Act* are ongoing.

New forms and procedures specific to this legislation will be required, as it differs from the current provincial legislation in some respects. Currently, the forms and procedures are in the process of being developed.

When the designations, forms and procedures are in place, the province intends to provide training to police forces and designated justices of the peace in order to facilitate the implementation.

First Nations will also need to be informed and consulted as implementation proceeds.

---

<sup>3</sup> Family Law Nova Scotia, *Emergency Protection Orders* (July 29,2014), online: <http://www.nsfamilylaw.ca/family-violence/urgent-emergency-applications-and-orders/emergency-protection-orders>



## **5. NEW BRUNSWICK**

### **5.1 Appointment of designated judges by the province**

On May 7, 2015, judges were designated within the Family Division of the Court of Queen's Bench of New Brunswick by an Order of the Lieutenant-Governor in Council.

### **5.2 Challenges in appointing designated judges**

The Province of New Brunswick has a unified Family Court, which is a superior level of court dealing with all family law matters under both federal and provincial legislation. Family law issues, including child custody, child access, child and spousal support, marital property, divorce, child and adult protection and so forth, are all heard at the same superior court level, the Court of Queen's Bench, Family Division.

In New Brunswick, the Provincial Court has jurisdiction to deal with criminal matters pursuant to the Criminal Code of Canada and other legislation. As a result, having the Provincial Court deal with emergency protection orders and the Court of Queen's Bench, Family Division, dealing with the matrimonial real property issues under the *Family Homes on Reserves Act* would have led to confusion for litigants who sought remedies under the *Act* at two different levels of court. Consequently, relying exclusively on the Court of Queen's Bench for the provisions of the federal legislation ensures that the application for an EPO would be dealt with at one level of court, potentially allowing for ease of access by litigants.

New Brunswick does not have justices of the peace. In considering which level of judge should be appointed to hear EPOs it became evident that designating a Provincial Court Judge would have triggered an automatic review by a Superior Court Judge within three (3) days, each time that an EPO was issued. This would lead to two levels of court having to hear these matters, which would have created an administrative challenge.

### **5.3 Challenges faced by the province in establishing forms and/or procedures for the EPOs**

A challenge faced by the province in establishing forms and/or procedures for the EPOs was a lack of federal funding when the legislation was proclaimed; particularly to develop self-help guides to assist self-represented litigants navigate through the family justice system.

A lack of federal funding impeded the training of court personnel and the development of communication materials regarding the New Brunswick approach. The province is still seeking funding to develop these materials and has indicated that federal funding to train superior court level judges through the National Judicial Institute is appreciated.

#### **5.4 Number of EPO applications and successfully issued EPOs by the courts in the province**

As of February 12<sup>th</sup>, 2016, no applications for EPOs under the federal *Act* have been filed at the Court of Queen's Bench, Family Division.

As of February 12<sup>th</sup>, 2016, no EPOs under this legislation have been issued by the New Brunswick courts.

#### **5.5 Police Forces in New Brunswick and implementation of EPOs**

In New Brunswick, one First Nation community located in Fredericton, St. Mary's First Nation, is provided policing services by a municipal policing agency and the remainder of the First Nations communities across the province are provided policing services by the RCMP.

Both the RCMP and Municipal Police were represented on a provincial Interdepartmental Committee, formed in January 2014 to develop a strategic plan to address the impact of the federal *Act*.

In addition to enforcement issues, under the federal legislation, another person can make an EPO application on behalf of the victim, such as a police officer. However, the RCMP and Municipal Police in New Brunswick are not accustomed to making applications on behalf of victims of family violence to the Court of Queen's Bench, Family Division and are not familiar with the forms and processes. This may present a training issue for these policing agencies.

### **6. QUÉBEC**

The Province of Quebec has not appointed designated judges in order to implement section 16 of the *Act*.

#### **6.1 Appointment of designated judges by the province**

The Quebec Ministère de la Justice is currently in the process of evaluating the possibility of modifying its Code of Civil Procedure<sup>4</sup> in order to adopt a process that would be closer to the provisions within section 16 of the *Act*.

#### **6.2 Rules and regulations**

The following is a review of the current rules and regulations for domestic violence cases on reserve in Quebec:

In Quebec, there are no civil emergency protection orders in case of family violence.

---

<sup>4</sup> Code of Civil Procedure, RLRQ c C-25.01

The government of Quebec has adopted a «*Quebec policy on domestic violence*<sup>5</sup>» and a «*Government Action Plan 2012-2017 on Domestic Violence*<sup>6</sup>».

The government of Quebec has based the *Quebec policy on domestic violence* on the following nine (9) principles<sup>7</sup>:

- Society must refuse and denounce all forms of violence;
- Society must promote respect for all and respect of diversity;
- Elimination of domestic violence is based upon relations based on gender equality;
- **Domestic violence is a criminal matter;**
- Domestic violence is a way to dominate someone and to affirm power on this person;
- Safety and the protection of women and children victims of violence have priority when it comes to intervention;
- All intervention towards victims must be based on respect of their autonomy and on their capacity of taking back control of their life;
- All intervention must consider all effects of domestic violence on children and must aim to minimize them;
- The abusers are responsible for their violent behavior, intervention must aim to have them recognize their responsibility towards their violence and to assume it.

Currently, in Quebec, the intervention in domestic violence cases is the same whether on reserve or off reserve. Quebec has a policy of zero tolerance and when there is a case of domestic violence, any intervention is based on the provisions of the Criminal Code. In domestic violence cases on reserve, many times it is the victims and children that are forced out of the family homes.

When the victim's safety is at risk, it is recommended to notify police forces. The perpetrator would then be arrested and charged with the criminal acts committed.

---

<sup>5</sup> Justice Québec, *Politique d'intervention en matière de violence conjugale* (May 30, 2006), online : <http://www.justice.gouv.qc.ca/francais/publications/rapports/violence.htm>

<sup>6</sup> Gouvernement du Québec, *Prévenir, dépister, contrer – Plan d'action gouvernemental 2012-2017 en matière de violence conjugale* (2012), online : [http://www.scf.gouv.qc.ca/fileadmin/publications/Violence/Plan\\_d\\_action\\_2012-2017\\_version\\_francaise.pdf](http://www.scf.gouv.qc.ca/fileadmin/publications/Violence/Plan_d_action_2012-2017_version_francaise.pdf)

<sup>7</sup> Justice Québec, *supra* note 8.

## **7. ONTARIO**

### **7.1 Appointment of designated judges by the province**

The province of Ontario has not appointed designated judges in order to implement section 16 of the *Act*.

### **7.2 Current process implemented by the province**

On reserve in Ontario, there is no possibility of filing for an EPO. However, the victim of domestic violence on reserve can proceed as follows:

The victim can apply for a restraining order against his/her abuser. With a restraining order the victim will then be protected and the victim's safety shall be assured. Restraining orders can be granted in case of emergency with no need for notice to the other party. However, the person to whom an urgent restraining order was granted needs to return to court within 14 days. It could be either the Ontario Court or the Superior Court. Then the victim can apply for the exclusive occupation of the family home by filing for an exclusive occupation order under section 20 of the *Act*.

The difference between the protections that would be provided by an EPO and the current process implemented by the province, is the emergency component of it. The process for making an application under Section 20 of the *Act* could delay a victim from obtaining exclusive occupation of the family home on an urgent basis.

### **7.3 Is the province considering the appointment of designated judges**

The province of Ontario wanted to consult First Nations concerning the need for appointing designated judges and implementing section 16 of the *Act* before considering taking any actions towards appointing designated judges. First Nations from Ontario requested more time in order for them to adopt their own matrimonial real property laws.

The Province of Ontario has not decided on whether or not to designate judges and is planning to reassess the need in 2016.

## **8. MANITOBA**

### **8.1 Appointment of designated judges by the province**

The province of Manitoba has not appointed designated judges in order to implement section 16 of the *Act*.

### **8.2 Current process implemented by the province**

Instead of appointing designated judges, Manitoba has implemented changes to the *Court of Queen's Bench Rules* to provide a process for superior court judges to hear and determine applications “for without notice interim orders of exclusive occupation” under section 20 of the *Act*.<sup>8</sup> As well, the new application process is intended to be expeditious, uses prescribed fill-in-the-blank forms and can be completed without assistance from a lawyer.

### **8.3 Is the province considering the appointment of designated judges**

Due to the implementation of the process described in chapter 8.2, the province of Manitoba is not considering the appointment of designated judges in the near future. It appears that there have been very few applications, if any, under the Manitoba process. If the number of applications increases, Manitoba will reconsider the possibility of appointing a designated judge or judges.

The province of Manitoba has a comprehensive protection order regime under provincial law, *The Domestic Violence and Stalking Act*, most of which is applicable on First Nations reserves. Unlike other provinces/territories, Manitoba's regime does not include an automatic review of all protection orders by a Superior Court Judge. Therefore, to designate a judge under the *Act* would require them to create a new procedure for protection orders under the federal *Act* and would lead to confusion about orders under provincial and federal laws. Manitoba elected to maintain its provincial protection order regime and fill the gap respecting exclusive occupancy of a home on a First Nation reserve with the aforementioned process.

## **9. SASKATCHEWAN**

### **9.1 Appointment of designated judges by the province**

The province of Saskatchewan has not appointed designated judges in order to implement section 16 of the *Act*.

### **9.2 Current process implemented by the province**

The province of Saskatchewan has an established process for applying for Emergency Intervention Orders (EIOs) under provincial legislation. EIOs are granted by justices of the peace, and confirmed by a Court of Queen's Bench judge within three (3) days. The current form is contained in the provincial rules and regulations, and the aim is to insert the additional remedies under the federal legislation.

---

<sup>8</sup> See changes to the Court of Queen's Bench Rules, which came into effect December 16, 2014, online:  
<http://web2.gov.mb.ca/laws/regs/annual/2014/271.pdf>

According to information available on the Government of Saskatchewan Ministry of Justice's website<sup>9</sup>; ongoing training is provided to policing agencies regarding EIOs.

*The EIOs provide the following protections:*

- *Short term orders that can be obtained 24 hours a day;*
- *Grant the victim exclusive occupation of the residence (off reserve);*
- *Direct a police officer to remove the suspected abuser from the home (off reserve);*
- *Prevent the abuser from communicating with the victim and other specified persons;*
- *Restrain the respondent from attending at, or near, or entering places the victim goes to regularly;*
- *Any provision that the justice of the peace feels necessary to provide for the immediate protection of the victim.*

*The EIOs are available through the following:*

- *Police;*
- *Victim Services Programs; and*
- *Mobile Crisis programs in Regina, Saskatoon and Prince Albert.*

The current EIOs process does not grant exclusive occupancy of the family homes on reserve in emergency cases. The victim can apply for the exclusive occupation of the family home by filing for an exclusive occupation order under section 20 of the *Act*.

The difference between the current protections provided by an EIO and the EPO proposed under section 16 of the *Act*, is the emergency component of it. The process for making an application under Section 20 of the *Act* could delay a victim from obtaining exclusive occupation of the family home on an urgent basis.

### **9.3 Is the province considering the appointment designated judges**

The Federation of Indian Nations (FSIN) adopted a resolution in 2015, indicating that they did not wish for the province of Saskatchewan to designate judges. Therefore, the province decided to postpone the designation of judges.

The province will further consult with the FSIN and other First Nations and is subsequently delaying any development of this process.

---

<sup>9</sup> <http://www.justice.gov.sk.ca/victims-of-domestic-violence-act>

## 10. ALBERTA

### 10.1 Appointment of designated judges by the province

The province of Alberta has not appointed designated judges in order to implement section 16 of the *Act*.

### 10.2 Current process implemented by the province

The province of Alberta has a *Protection Against Family Violence Act's*<sup>10</sup> which provides protection in cases of family violence such as emergency protection orders. To grant an emergency protection order (EPO), the courts (justice of the peace, judge) must determine that family violence has occurred, that the claimant has reason to believe that the respondent will continue or resume carrying out family violence, and that immediate protection of the claimant and other family members is required due to the seriousness and urgency of the matter. A Queen's Bench protection order may be granted by a justice of the Court of Queen's Bench on application if the justice believes that the claimant has been the subject of family violence.

The *Protection Against Family Violence Act's*<sup>11</sup> primary principles are as follows:

- Family violence is a crime;
- A number of things are considered when an emergency protection order is applied for including the history of the violence, whether there is an immediate danger to persons and property and best interests of the abused family members;
- Abused family members are entitled to the maximum protection under the law;
- Abused family members are entitled to be free and safe from violence;
- Supports abused family members to remain in their home (off reserve only);
- Provides ability to continue financial support for the abused family members;
- Holds the abuser accountable;
- Is complementary to the *Child, Youth and Family Enhancement Act* and the *Criminal Code of Canada*.

As described on the Alberta Courts website, the following conditions may be contained in an EPO:

- *restraining the respondent from attending at or near a specified place that is attended regularly by the claimant or other family members. This could include*

---

<sup>10</sup> Protection Against Family Violence Act, RSA 2000, c P-27

<sup>11</sup> Protection Against Family Violence Act, RSA 2000, c P-27

- the residence, property, business, school, or place of employment of the claimant or family members (family homes off reserve);*
- *restraining the respondent from communicating with or contacting the claimant and other specified persons. Note: this is to be interpreted as prohibiting communication and contact by any means, including through a third party, unless the order expressly provides otherwise;*
  - *granting the claimant and other family members exclusive occupation of the residence for a specified period. This is regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties (off reserve);*
  - *directing the police to remove the respondent from the residence immediately or within a specified time (off reserve);*
  - *directing the police to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant (off reserve);*
  - *directing the seizure and storage of weapons where the weapons have been used or threatened to be used to commit family violence; and*
  - *any other provision that the provincial court judge or designated justice of the peace considers necessary to provide for the immediate protection of the claimant<sup>12</sup>.*

### **10.3 Is the province considering the appointment designated judges**

The province of Alberta does not have the intention, in the near future, of appointing designated judges.

Whether or not judges will be designated is a policy decision that will need the approval of the Minister of Justice and Attorney General, and probably the approval of the Cabinet as well.

If the Minister is agreeable to designation, work will also need to be done to prescribe the process for emergency protection orders in a set of regulation or rules, which in turn will also need the approval of Cabinet. Such work would ensure that the process would be compatible, to the extent possible, with the process currently in place for the provincial family violence legislation.

The work to develop the EPO process will also include examining what types of forms, or changes to forms, might be needed. In addition, consultation with the Provincial Court

---

<sup>12</sup> Alberta Courts, *Restraining and Protections Orders – General information* (n.d.), online: : <https://albertacourts.ca/resolution-and-court-administration-serv/family-justice-services/family-self-help/restraining-and-protection-orders-general-information>



of Alberta (which also oversees the justices of the peace) respecting process may also be needed.

Furthermore, training of the appropriate policing agencies and engagement of Alberta's First Nations will be needed.

## **11. BRITISH COLUMBIA**

### **11.1 Appointment of designated judges by the province**

The province of British Columbia has not appointed designated judges in order to implement section 16 of the *Act*.

### **11.2 Current process implemented by the province**

Section 183 of British Columbia's *Family Law Act*<sup>13</sup> provides for protection orders that may be made to protect individuals from violence inflicted by other family members. Because they are focussed on the protection of a person and not the preservation of property rights, they are applicable on and off reserve. Section 186 of the *Family Law Act* provides that these orders may be made without notice. Section 192 and 193 of the *Family Law Act* provides that protection orders may be made by both levels of trial courts in British Columbia – the Supreme Court of British Columbia and the Provincial Court of British Columbia.

The province considers that it may be confusing to have two emergency protection order regimes operating on reserve and that there were advantages to using the provincial legislation over the federal legislation. Protection orders made under the *Family Law Act* are broader in application. There is no requirement that a spousal relationship be established. Also, they can be made if only a risk of violence is established rather than needing to establish an occurrence of family violence as EPOs under the federal legislation appear to require. Enforcement of breaches of *Family Law Act* protection orders are prosecuted as *Criminal Code* offences rather than through a civil process.

The victim can apply for the exclusive occupation of the family home by filing for an exclusive occupation order under section 20 of the *Act*.

The difference between the protections that would be provided by an EPO and the current process implemented by the government, is the emergency component of it. The process for making an application under Section 20 of the *Act* could delay a victim from obtaining exclusive occupation of the family home on an urgent basis.

### **11.3 Is the province considering the appointment of designated judges**

---

<sup>13</sup> Family Law Act, SBC 2011, c 25

The Province of British Columbia is not considering the appointment of designated judges for the moment. The Province continues to monitor the implementation of the federal *Act* within its province.

It was decided by the province that there is no need to appoint designated judges because British Columbia already has a protection order regime in place under its *Family Law Act* that is accessible both on and off reserve.

## 12. CONCLUSION

In light of this present report, it appears that some provinces are considering that their current rules and regulations concerning domestic violence provide sufficient protection to victims and their children. Provinces seem to consider that the *Act* would not provide additional protections to victims and their children. However, current rules and regulations in most provinces do not provide the same protections.

As mentioned, section 16 of the *Act* stipulates that a designated judge may make an emergency protection order for up to 90 days, if family violence has occurred and if there is a serious or urgent situation that requires an immediate response to protect a person from the risk of harm or property from the risk of damage. The victims then have access to a 24-hour service that may grant them exclusive occupancy of their family homes even if they are not the holder of the titles of the family homes (for example, if the Certificate of Possession is under their abuser's name, they can be granted exclusive occupancy of their homes for a period of up to 90 days). By not implementing section 16 of the *Act*, provinces are not providing the same extent of protections to victims of domestic violence living on reserve.

Although the victims are protected and their safety is ensured, by not implementing section 16 of the *Act*, they will most often have to find refuge for themselves and their children in a shelter until an order under Section 20 of the *Act* has been made. During such disturbing times, they might also be forced to move out and, considering the shortage of homes on most reserves across Canada, they will probably end up in a shelter and often out of their communities. By implementing section 16 of the *Act*, provinces are also granting the victims of domestic abuse and their children, the right to stay in the comfort of their homes and also to remain in the community where they can get support. The abuser will have to find somewhere else to reside for that period of time.

Some provinces are also promoting the fact that the victims can apply for the exclusive occupation of the family home by filing for an exclusive occupation order under section 20 of the *Act*. The main difference between the protections that would be provided by an emergency protection order and the ones provided by an exclusive occupation order, is the emergency component of it. The process for making an application under Section 20 of the *Act* could delay a victim from obtaining exclusive occupation of the family home on an urgent basis. Overall, the majority of provinces are at the assessment phase of identifying their needs in order to fully implement section 16 of the *Act*.