

**PROPOSED AMENDMENTS BY THE JOINT ULCC/CCSO WORKING
COMMITTEE TO THE UNIFORM ENFORCEMENT OF *CANADIAN
JUDGMENTS AND DECREES ACT* - CIVIL PROTECTION ORDERS**

Introduction:

[1] At the August 2004, meeting of the ULCC, in the beautiful City of Regina, it was resolved:

“THAT the chairperson of the Civil Section, with necessary consultation among interested participants, establish a working group with the mandate to work with the CCSO (Coordinating Committee of Senior Officials – Family Law) to provide for recommendations on either a new *Uniform Act on Interjurisdictional Protection Orders* or modifications to the existing *Uniform Enforcement of Canadian Decrees Act* and the *Uniform Enforcement of Canadian Judgments and Decrees Act* and report back to the annual meeting of the Conference in August 2005.”

Establishment of Working Group:

[2] Pursuant to this resolution, a joint ULCC-CCSO working group was struck with the following membership:

- Joan MacPhail, Q.C., Manitoba -CCSO
- Anne-Marie Predko, Ontario -CCSO
- Betty Ann Pottruff, Q.C., Saskatchewan -CCSO
- Peter Lown, Q.C., Alberta -ULCC
- Darcy McGovern, Saskatchewan-ULCC

The Committee met via telephone conference several times over the year in the preparation of this report and would like to extend its thanks to Saskatchewan for the drafting and translation of this report.

Background:

[3] In their September 2003 report, the federal/provincial/territorial Co-ordinating Committee of Senior Officials (CCSO)- Family Justice, requested and recommended that certain changes to the *Uniform Enforcement of Canadian Judgments and Decrees Act* be made to better facilitate inter-jurisdictional recognition and enforcement of civil orders of protection. More specifically, they recommended:

- adding a definition of “civil order of protection”,
- recognition and enforcement of civil orders of protection whether or not such orders are registered,
- revision of the law enforcement civil immunity provision,
- retroactive application of the Act to existing civil orders of protection; and,
- possibly expressly providing that section 127 of the *Criminal Code (Canada)* applies to breaches of Canadian civil orders of protection.

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[4] Currently, in addition to the standard requirement of registration of a judgment, our ULCC Act provides that:

“(2) Law enforcement authorities acting in good faith may, without liability, rely on and enforce a purported Canadian judgment that:

- (a) was made in a proceeding between spouses or domestic partners having a similar relationship, and
 - (b) enjoins, restrains, or limits the contact one party may have with the other for the purpose of preventing harassment or domestic violence
- whether or not the judgment has been registered in the [superior court of unlimited trial jurisdiction in the enacting province or territory] under subsection (1).”

[5] The commentary for this provision states:

Protection orders require some special treatment. In this context, enforcement is not so much a matter of invoking the assistance of the local court as it is in getting local law enforcement authorities to respond to a request for assistance. When the police are called on to intervene in a situation of domestic harassment their response may well turn on whether a valid protection order exists. If the police are satisfied on this point they may be prepared to act in marginal situations. If they are forced to rely solely on powers derived from the *Criminal Code* they may be reluctant to intervene except in cases where the potential violence or breach of the peace is beyond doubt.

[6] The stated purpose of the proposed CCSO deeming provision would be to both avoid the procedural burden of registration of the judgment altogether and to thus better facilitate subsequent **criminal** enforcement of breach of that judgment by virtue of section 127 of the *Criminal Code* for disobeying an order of court.

Results of the Working Group Deliberations:

[7] In considering the issue as presented by the resolution of the ULCC, members of the joint working group first debated the merits of the overall proposal to give civil protection orders, however defined, “special treatment” that would promote their enforcement without first requiring them to be registered in the province of enforcement in the same manner as any other Canadian Judgment under that Uniform Act. After some discussion, it was quickly acknowledged that the policy choice to promote the enforcement of Canadian judgments in the nature of a civil protection order had already been made in the original Act as reflected by the following words used in section 3 “ Law enforcement authorities acting in good faith may, without liability, rely on and enforce a purported Canadian judgment ... whether or not the judgment has been registered...”(emphasis added). As there was no suggestion from any quarter that this previous decision be reversed, the debate was therefore focused on whether to take the additional and unique step of further promoting the enforcement of such orders by expressly deeming them to be effective and enforceable without registration. Again, it was concluded by the working group that insofar as the Act already held free from harm any police officer that acted on

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a purported order, taking the additional step of addressing the substantive legal status of such an order was both consistent with the policy goal of the original Act and justifiable as promoting that goal in a more direct and effective manner.

[8] Having concluded that the proposal to deem civil protection orders to be a local judgment without registration was desirable, the working group turned to the issue of how this could be done. Pursuant to the resolution, the initial options discussed were whether to amend the existing Act to work the civil protection provisions into the existing definitions and substantive provisions or to instead proceed with separate stand-alone legislation that would not risk “muddying the waters” with respect to the operation of the more general existing provisions. After debating the merits of each approach, and as a compromise, the working group settled on the development of an amending Act that would create a separate division or “Part” that specifically addressed civil protection orders. This approach would avoid the revision of the majority of the existing provisions, particularly for those jurisdictions that had already implemented the Uniform Act, while also avoiding the extra time, effort and risk of a division of support that a separate Act could lead to.

Overview of Amending Act:

[9] The proposed uniform amending Act establishes a new Part III to the *Uniform Enforcement of Canadian Judgments and Decrees Act* that will establish special rules for Canadian Civil Protection Orders. A Canadian Civil Protection Order is defined to capture orders that prohibit a broad range of activities from communication to actual contact that can be used by one individual to intimidate, threaten, coerce or otherwise harass another individual. The definition establishes Canadian Civil Protection Orders as a specific subset of the broader definition of Canadian judgments that the Act applies to. A Canadian judgment, or a portion of a Canadian judgment, that contains protective provisions of the type described in the definition of a Canadian Civil Protection Order, would thus constitute a Canadian Civil Protection Order.

[10] Having defined a Canadian Civil Protection Order, the amending Act then proceeds to take the important step of specifically deeming such an Order to be an Order of the superior court of unlimited trial jurisdiction in the enforcing jurisdiction that is fully enforceable in the same matter as an Order of that local court. This legal deeming serves at least two important functions: it removes the need to register the Order as is required for all other Canadian judgments under the Act; and it obviates the need to look behind the Order to assess its validity or effect based on rules in the originating jurisdiction such as notice to the person who is the subject of the Order.

[11] Having deemed the Order to be a local Order, the next step in the new Part III is to expressly provide that the Order can be enforced by law enforcement agencies in the same manner as a local Order whether or not the Order has been registered in the enforcing jurisdiction. This is an express statement of legal effect for law enforcement agents and it is viewed as an important statement of authority that is intended to prevent any reluctance

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to enforce a Canadian Civil Protection Order under the Act. That being said, the Act also notes that a Canadian Civil Protection Order may be registered in the same manner as any other Canadian judgment under the Act if the enforcing party chooses to do so.

[12] The final step taken under the Act to promote the enforcement of a Canadian Civil Protection Order is to provide good faith liability protection for law enforcement agencies that take steps under the Act to enforce an Order.

[13] It should be noted that the Act does not create a new provincial offence for failure to comply with a Canadian Civil Protection Order. This omission is deliberate in deference to enforcement via section 127 of the *Criminal Code (Canada)*. In general terms, it has been the experience of a number of jurisdictions with their victims of domestic violence legislation that law enforcement agencies prefer the immediate power of arrest that an indictable *Criminal Code* offence provides and, further, that parties tend to treat a criminal offence more seriously than an equivalent provincial offence.

[14] Finally, the Act addresses scope of application with the statement that the Act will apply to all Canadian Civil Protection Orders that are already in effect when the Act is proclaimed in force, in addition to any future Canadian Civil Protection Orders.

Recommendation:

[15] The joint working group is pleased to recommend for adoption by the Uniform Law Conference of Canada the following *Uniform Enforcement of Canadian Judgments and Decrees Amendment Act* with commentary.

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Draft Uniform Amendment Act

Uniform Enforcement of Canadian Judgments and Decrees Amendment Act

Short title

1 This Act may be cited as *The Uniform Enforcement of Canadian Judgments and Decrees Amendment Act, 2005*.

***Uniform Enforcement of Canadian Judgments and Decrees Act* amended**

2 *The Uniform Enforcement of Canadian Judgments and Decrees Act* is amended in the manner set forth in this Act.

New Part Heading

3 The following heading is added before section 1:

**“PART I
Definitions”.**

Comment: The Amending Act separates the existing Act into four Parts.

Section 1 amended

4(1) Section 1 is amended by adding the following definition before “Canadian judgment”:

“Canadian civil protection order’ means a Canadian judgment or a portion of a Canadian judgment that prohibits a person from:

- (a) being in physical proximity to a specified person or following from place to place a specified person;**
- (b) contacting or communicating with, either directly or indirectly, a specified person;**
- (c) attending at or within a certain distance of a specified place or location;
or**
- (d) engaging in molesting, annoying, harassing or threatening conduct directed at a specified person ”.**

Comment: Section 1 is amended to define a “Canadian civil protection order” for the purposes of the Act. The definition includes any Canadian Judgment or portion of a

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Canadian Judgment that orders protection for an individual from another individual. This wording considered behaviours prohibited in civil protection orders pursuant to provincial/territorial legislation as well as recent Criminal Code provisions to address a broad range of behaviour that could intimidate, threaten or otherwise endanger another individual whether through direct contact or indirect harassment. Subsection 2(3) of the existing Uniform Act already provides that where a Canadian Judgment includes a portion that cannot be enforced under the Act, the balance of that judgment that is enforceable shall be enforced. The definition of Canadian Civil Protection Order adopts this approach by referring to a “portion” of a Canadian Judgment so that where there is a Judgment that has as one of its component elements, a prohibition that falls within the definition it may be severed from the main judgment and independently enforced under this Part as a Canadian Civil Protection Order in its own right.

(2) Clause (f) of the definition of “Canadian judgment” is amended by adding “, other than a Canadian civil protection order” after “minor”.

Comment: Clause 1(f) excludes orders related to the “care, control or welfare of a minor” (essentially custody, access and child welfare orders) from the definition of “Canadian judgment” as there are existing inter-jurisdictional enforcement mechanisms available. As a Canadian civil protection order affecting a child could be construed as an order relating to the “welfare of a minor”, this amendment is intended to clarify that such orders are covered by the Act.

New Part Heading

5 The following heading is added before section 2:

**“PART II
Enforcement of Canadian Judgments and Decrees”.**

Comment: Creates new Part II.

Section 3 amended

6(1) Subsection 3(1) is amended by renumbering it as section 3.

(2) Subsection 3(2) is repealed.

Comment: Subsection 3(2) is deleted and the substance of that provision is encompassed by the new Part III below.

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New Part III

7 The following Part is added after section 9:

**“PART III
Canadian Civil Protection Orders**

“Deeming of order

9.1 A Canadian civil protection order shall be deemed to be an order of [*the superior court of unlimited trial jurisdiction of the province or territory where the order is sought to be enforced*] and may be enforced in the same manner as an order of that court for all purposes.

Comment: This key provision deems any Canadian civil protection order to be an order of the superior court of the enforcing jurisdiction and further provides that it may be enforced as a judgment of that court for all purposes. Through this deeming provision, the general requirement for registration of a Canadian Judgment prior to enforcement as a “local judgment” is obviated in recognition that issues of validity and service have previously subverted the efficacy of inter-jurisdictional enforcement of these important, and often time sensitive orders.

“Enforcement by law enforcement agencies

9.2 A Canadian civil protection order is enforceable by a law enforcement agency in the same manner as an order of [*the superior court of unlimited trial jurisdiction of the province or territory where the order is sought to be enforced*] whether or not the order is a registered Canadian judgment

Comment: Section 9.2 speaks directly to the concern expressed by members of law enforcement agencies that an out of jurisdiction order may not be valid or enforceable in the enforcing jurisdiction. Having deemed the Canadian Civil Protection Order to be an order of the local court in 9.1, Section 9.2 expressly speaks to enforcement of that order regardless of registration.

“Registration permitted

9.3 A Canadian civil protection order may be registered and enforced as a Canadian judgment for the purposes of this Act.

Comment: While registration is not required for the enforcement of a Canadian civil protection order, a Canadian civil protection order may be registered and enforced in the same manner as any other Canadian judgment under the Act.

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“Immunity

9.4 No action or proceeding lies or shall be commenced against a law enforcement agency, including any employee or agent of a law enforcement agency, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the enforcement or supposed enforcement of a Canadian civil protection order or purported Canadian civil protection order pursuant to this Part or the regulations made pursuant to this Part.

Comment: Law enforcement authorities are provided with good faith liability protection for actions taken in the enforcement or other exercise of a Canadian civil protection order. This provision is intended to further support the inter-jurisdictional enforcement of such orders by enforcement agencies.

“Application of Part

9.5 This Part applies to a Canadian civil protection order:

- (a) that is in force at the time this Part comes into force; or**
- (b) that is issued after this Part comes into force”.**

Comment: Once in force, the Act will apply to all existing or future Canadian civil protection orders.

New Part Heading

8 The following heading is added before section 10:

**“PART IV
General”.**

Comment: Section 8 establishes Part IV of the Act. The Amending Act does not provide for a separate provincial offence for the violation of a Canadian civil protection order that has been deemed to be an order of the court of the enforcing jurisdiction. This choice is made to better facilitate the use of section 127 of the Criminal Code (Canada). Section 127 provides as follows:

Disobeying an order of court

127. (1) Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

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(2) Where the order referred to in subsection (1) was made in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government, any proceedings in respect of a contravention of or conspiracy to contravene that order may be instituted and conducted in like manner.

Bill C-2; *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act*, amends the existing section 127 (proclaimed into force November 1, 2005) as follows:

Subsection 127(1) of the *Criminal Code* is replaced by the following:

Disobeying order of court

127. (1) Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

As either an indictable criminal offence or a hybrid criminal offence section 127 provides an immediate right of arrest for law enforcement agencies. As such, experience suggests that it is more likely to be treated seriously by such agencies and by the alleged offender. Several provinces currently rely exclusively on this provision to enforce orders pursuant to their domestic violence legislation, however, insofar as the “foreign” Canadian civil protection order is deemed to be a local order, whether the legislation that gave rise to the original order has such a provincial offence is irrelevant to the enforcement of the deemed order under section 127 of the Criminal Code.