

Protection Against Family Violence Act Guide

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Protection Against Family Violence Act (PAFVA)

Family violence is complex, and the solutions to help protect victims and prevent further violence are varied. When victims of family violence and vulnerable family members such as children require immediate protection, Alberta's *Protection Against Family Violence Act* (PAFVA) is one means of helping ensure their safety. Family violence is defined in PAFVA, however a common understanding of family violence often describes family violence as the abuse of power within relationships of family, trust or dependency that endangers the survival, security or well-being of another person. It can take many forms including:

- spousal abuse;
- senior abuse and neglect;
- child abuse and neglect;
- child sexual abuse;
- parental abuse; and
- witnessing abuse of other family members.

Overview of PAFVA

History of the Legislation

The *Protection Against Family Violence Act* (PAFVA) came into force in 1999. This is an Alberta law that protects family members from family violence. Family members include seniors, women, men and children whether they reside together or apart. After a formal review and evaluation, the following amendments to the legislation were proclaimed in force on November 1, 2006.

- **The addition of stalking to the definition of family violence.** Research shows that 57 per cent of the time, stalkers are partners or former partners of the victim. This amendment is intended to provide better protection to those who have left a violent relationship.
- **Protection for family members, regardless of whether they live with their abuser.**
- **Ensuring that vulnerable people, such as seniors, are protected.**
- **Clarification on the use of emergency protection orders (EPOs).** EPOs can now be granted even if the offenders say they “did not mean” or “intend” to hurt anyone.
- **The removal of barriers that previously prevented some children from getting counselling.** A Queen’s Bench protection order can order that a child may receive counselling with the consent of only one parent.

Further review of the legislation took place in 2010, and amendments came into force on November 1, 2011:

- **The 2011 amendments added the offence and the consequences for breaching a protection order.** This amendment will help ensure consistent enforcement across the province for protection order breaches.

Primary Objectives of the Act

- To provide immediate protection and safety for claimant and family members.
- To serve as a deterrent to future family violence.
- To enable safety measures to be put in place for other family members.

Principles of the Legislation

- 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.
- 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.

Definition of Family Violence PAFVA

Family Violence includes – 1(1)(e):

- i) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member;
- ii) any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member;
- iii) forced confinement;
- iv) sexual abuse; and
- v) stalking;

but is not to be construed so as to limit a parent or a person standing in the place of a parent from using force by way of correction toward a child who is under the care of the parent or person if the force does not exceed what is reasonable under the circumstances.

Definition of a Family Member PAFVA

Family Member(s) means – 1(1)(d)

- (i) persons who are or have been married to one another, who are or have been adult interdependent partners of one another or who are residing or have resided together in an intimate relationship;
- (ii) persons who are the parent of one or more children, regardless of their marital status or whether they have lived together at any time;
- (iii) persons who are related to each other by blood, marriage or adoption or by virtue of an adult interdependent relationship;
- (iv) any children in the care and custody of a person referred to in sub clauses (i) to (iii); or
- (v) persons who reside together where one of the persons has care and custody over the other pursuant to an order of the court.

“Claimant” means a family member for whom a protection order is sought or granted.

“Respondent” means a family member against whom a protection order is sought or granted.

Authority of the Legislation

The law protects abused family members in a variety of living situations or relationships such as: married, separated, divorced, common-law, parents who have not resided together, step-children, people who live together where one person has legal care and custody over the other.

To grant an emergency protection order, 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.

A protection order under PAFVA is an order of the court, and under section 13, it is an offence to obstruct someone from carrying out a duty under a protection order or to breach a protection order. Please see pages 14 and 23 for more information about breaches of protection orders and penalties for committing such offences.

Additional Benefits of PAFVA

- Emergency protection orders (EPOs) provide protection to victims of family violence, can be applied for and issued 24 hours a day, and can be extended up to one year to provide longer-term protection;
- The claimant (and other specified family members) may remain in the home;
- There is no cost to obtain an EPO;
- Children can be better protected from family violence;
- Stalking is included as family violence under PAFVA. Alberta is the second province after Manitoba to include this provision.

Tools of the Protection Against Family Violence Act (PAFVA)

PAFVA has three key tools to enhance protection: an emergency protection order, a Queen's Bench protection order, and a warrant permitting entry.

Emergency Protection Order (EPO)

Who Can Apply?

Those who can apply for a protection order are: claimants, designated persons with the claimant's consent, and any person on the claimant's behalf with "leave" of the court (typically in extreme situations where the claimant cannot apply due to age or is incapacitated). Only certain people can apply for an emergency protection order by phone. These "designated persons" are defined in section 3 of the Protection Against Family Violence Regulation. They are peace officers, or persons authorized by a police service to assist in applying for orders, a director designated under section 129 of the *Child, Youth and Family Enhancement Act*, or those authorized by the Minister of Human Services. There is no cost for an EPO. The court clerks and Legal Aid can provide information about how to apply for an EPO.

How to Apply – an Overview

Telephone Application

A telephone application made by a “designated person” (such as a police officer or Human Services caseworker) requires the completion of paperwork, some of which may be forwarded to the justice of the peace via fax, in conjunction with a telephone call. In certain situations, it may be appropriate for the designated person to put the claimant on the phone to provide information to the justice of the peace. This will provide direct evidence that may be helpful for the review of the order at the Court of Queen’s Bench.

Application Made in Person

An application made in person in provincial court requires the completion of a sworn application form and the appearance before a judge where verbal evidence may also be required. The EPO can be granted to provide immediate protection if the judge or justice of the peace determines 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, by reason of seriousness or urgency, the order should be granted to provide for the immediate protection of the claimant and other family members that reside with the claimant. It is important to ensure that the person who applies for the EPO provides a copy to the police. The police will serve the EPO on the respondent, will file an affidavit of service, and will enter the duration and the conditions of the EPO on the Canadian Police Information Centre (CPIC) system.

Filling Out the Forms

When applying for an emergency protection order before a provincial court judge, the application form is often the first thing a judge sees and this will be your first opportunity to provide the appropriate information. To ensure your application form is filled out correctly, here are a few basic tips:

- The emergency protection order application and emergency protection order are available at www.albertacourts.ab.ca/forms/ and should be filled out on the computer.
- Do not fill the forms out by hand unless absolutely necessary.
- Always type out the full name of the month when giving a date unless the form requires otherwise (there is NO standard order of day/month/year so 02/03/04 could be February 3 2004 or March 4, 2002 or any other combination).
- Most forms are regulated forms and therefore cannot be altered or changed.
- When giving the claimant’s name, capitalize the surname to avoid confusion.
- Be as specific as you can with the information you are giving.
- All information should be based on facts as opposed to opinions (Example: It is your opinion if you state “the man was drunk.” It is a statement of fact if you state “the man was slurring, stumbling, smelled of alcohol and had red eyes.”).

Samples of the application form and the emergency protection order are on the following pages. These are samples only, as the forms should be filled out on the computer wherever possible (as noted above).

Emergency Protection Order Application – Sample



Court File No.:

The Provincial Court of Alberta
 In the matter of the Protection Against Family Violence Act

Check here if the claimant does not want the respondent to know his/her location.

BETWEEN

Name Address at which legal documents may be served on you, Phone No.		Claimant (family member requesting an Emergency Protection Order)
and		
Name Last known Address, Phone No.		Respondent (family member who Claimant wants protection from)

Emergency Protection Order Application

1. I, _____ swear/affirm that

- I am the Claimant
- I am a
 - Peace Officer/person authorized by a police service to assist with applications for emergency protection orders and I have advised the Claimant of this application and he/she has consented to the application being made.
 - Person authorized by the Minister of Children and Youth Services to apply for emergency protection orders and I have advised the Claimant of this application and he/she has consented to the application being made.
- I am a person asking for leave of the judge to make this application on behalf of the Claimant.

Check all that apply

2. The Claimant and Respondent are family members because they:

- are or have been married to each other _____
Date of marriage and/or date of separation
- are or were adult interdependent partners _____
Date relationship began and/or date of separation
- are or have resided together in an intimate relationship _____
Date relationship began and/or date of separation
- are the parents of one or more children.
- are related to each other by blood, marriage or adoption or by virtue of an adult interdependent relationship.
- have children who are in the care and custody of a person referred to above.
- reside together where one has care or custody of the other pursuant to an Order of the court.

provide full names of children and birthdates (yyyy/mm/dd)

3. The name(s) and birth date(s) of any children involved and the name of the person with whom they live are:

Check all that apply

4. The following family violence has occurred:

- an intentional or reckless act or omission that caused injury or property damage and that intimidates or harmed a family member
- an act or threatened act that intimidated a family member by creating a reasonable fear of property damage or injury to a family member
- forced confinement
- sexual abuse
- stalking

Provide brief details for box(es) checked

5. The claimant has reason to believe that the Respondent will continue or resume carrying out family violence and he/she needs an emergency protection order for their immediate protection because:

List weapons and where they may be found

6. **(Complete numbers 6 through 9 only if applicable)**
The Respondent has used or threatened to use the following weapons to commit family violence:
7. The following are previous applications and/or orders for family violence between Claimant and the Respondent (EPO, Queen's Bench Protection Order, Restraining Order, Peace Bond, Bail, order under the *Child, Youth and Family Enhancement Act*) and the conditions of the orders:
8. I am aware of the following other family law matters between these family members currently before the courts, i.e. divorce, custody, parenting time, *Child, Youth and Family Enhancement Act, etc.*:
9. I am aware of the following information respecting the Respondent's criminal record and/or criminal charges that have been or may be laid:

I want an Emergency Order that:

1. The Respondent shall not attend at, enter or be within _____ metres from the following:
- (a) the Claimant's/family member's residence:
_____ address
- (b) the Claimant's/family member's place of employment:
_____ address
- (c) the Claimant's/family member's other addresses:
_____ address
- or be within _____ metres of the Claimant and family members anywhere in the Province of Alberta.
2. The Respondent shall not communicate with or contact directly or indirectly the Claimant and the following persons:

3. The Claimant and other family members are granted exclusive occupation of the residence located at:
_____ address
for _____
specify time period
4. A peace officer shall remove the Respondent from the residence located at:
_____ address
immediately or within _____
specify time period
5. A peace officer shall accompany _____ name
to the residence within _____ to supervise the removal of personal belongings.
specify time period
6. A peace officer shall seize and store the following weapons:

7. _____

Sworn/Affirmed before me

on _____

at _____, Alberta.

Applicant's Signature

Justice of the Peace or Commissioner of Oaths
in and for the Province of Alberta

Date

Print Name and Expiry

Emergency Protection Order – Sample



Court File No.: _____

The Provincial Court of Alberta

BETWEEN

Claimant

and

Respondent

Emergency Protection Order

To: _____
hereinafter referred to as **THE RESPONDENT**:

You are subject to this Emergency Protection Order made pursuant to the *Protection Against Family Violence Act*.

YOU MUST OBEY THE PROVISIONS OF THIS ORDER. Failure to obey this Order may constitute a summary or indictable offence under the *Criminal Code of Canada* or may result in civil contempt proceedings being taken against you.

YOU SHOULD IMMEDIATELY CONTACT A LAWYER for advice as to what your rights are and as to what you are required to do respecting this Order.

ON hearing evidence, I find that family violence has occurred, that the Claimant has reason to believe that you will continue or resume carrying out family violence, and that, by reason of seriousness or urgency, this Order should be granted to ensure the immediate protection of the Claimant and other family members who reside with the Claimant, pursuant to Section 2 of the *Protection Against Family Violence Act*.

I DO HEREBY ORDER THAT:

1. The Respondent shall not attend at, enter or be within _____ metres from the following:
(a) the Claimant's/family member's residence:
_____ address
(b) the Claimant's/family member's place of employment:
_____ address
(c) the Claimant's/family member's other addresses:
_____ address
or be within _____ metres of the Claimant and family members anywhere in the Province of Alberta.
2. The Respondent shall not communicate with or contact directly or indirectly the Claimant and the following persons:

3. The Claimant and other family members are granted exclusive occupation of the residence located at:
_____ address
for _____
specify time period
4. A peace officer shall remove the Respondent from the residence located at:
_____ address
immediately or within _____
specify time period
5. A peace officer shall accompany _____ name
to the residence within _____
specify time period to supervise the removal of personal belongings.
6. A peace officer shall seize and store the following weapons:

7. _____

Please cross out
and initial if
Paragraph 8 does
not apply

8. On the Respondent being in breach of any of the terms of this Order, any peace officer shall provide assistance to ensure that the Respondent complies with the Order and is authorized to forthwith arrest the Respondent, detain and bring the Respondent, at the earliest possible time, before a Justice of the Court of Queen's Bench of Alberta to show cause why there should not be a committal for civil contempt. However, the Respondent shall not be arrested unless the Respondent has been previously served with a copy of this Order, or if not served, is shown a copy of this Order by the peace officer and, on being given an opportunity to do so, does not thereafter obey it. This Order is sufficient authority for the keeper of a correctional institution to receive the said Respondent into custody and to safely keep the Respondent pending appearance before a Justice of the Court of Queen's Bench of Alberta. Nothing in this clause shall limit the right of a peace officer to proceed with the laying of a charge under Section 127 of the *Criminal Code of Canada*.
9. In making an arrest as aforesaid, a peace officer is authorized to do all such acts as may be necessary to carry out the arrest and, for such purposes, the peace officer is hereby given full power and authority to use as much force as may be necessary to effect the arrest, and without warrant to enter on the following lands and premises to effect the arrest:

This Order will be reviewed by the Court of Queen's Bench of Alberta.

YOU HAVE THE RIGHT TO APPEAR at the review on _____ at _____
yyyy/mm/dd time

before the Court of Queen's Bench at _____

This review will be based on Affidavit evidence and any other sworn/affirmed evidence. The evidence presented by you at the hearing must be by way of an Affidavit filed and served on the other party at least 24 hours prior to the review. Personal service should be effected by a neutral third party (ie. Process Server). This review will give you the opportunity to present evidence as to whether this Order should be revoked, confirmed or replaced by a Protection Order of the Court of Queen's Bench.

This Order remains in force until _____ or until further Order of the Court of Queen's Bench.

Dated on _____ at _____ at _____, Alberta.
yyyy/mm/dd time city/town

Provincial Court Judge or Justice of the Peace

Print Name of Person signing

What if the Claimant/Applicant is Unable to Apply?

Generally, a designated person will obtain the consent of the claimant before applying for an EPO. However, PAFVA allows that in situations where the claimant is unable to apply for the order her/himself (e.g. claimant is a minor, claimant is incapacitated), any person can apply on behalf of the claimant with the leave of the judge. This may be useful in situations where the claimant does not have capacity to provide consent.

Court's Consideration

In determining whether an EPO should be granted, the courts (justice of the peace or judge) must consider, but not be limited to considering, the following:

- the history of family violence by the respondent toward the claimant and other family members;
- whether there is or has been controlling behaviour by the respondent toward the claimant and other family members;
- whether the family violence is repetitive or escalating;
- the existence of any immediate danger to persons or property;
- the vulnerability of elderly claimants;
- the effect of exposure to family violence on any child of the claimant or on any child who is in the care and custody of the claimant;
- the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant; and
- the claimant's need for a safe environment to arrange for longer-term protection from family violence.

The following provisions should **not** preclude the granting of an emergency protection order:

- that a protection order or other no contact types of orders have been previously granted (various orders are included);
- that a respondent has previously complied with a protection order and the conditions;
- that the respondent is temporarily absent from the residence at time of application;
- that the claimant is temporarily residing in an emergency shelter or other place;
- that criminal charges have been or may be laid against the respondent; and
- that the claimant has a history of returning and residing with a respondent after acts of family violence.

Possible Conditions of an EPO

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 the residence, property, business, school, or place of employment of the claimant or family members;
- 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;

- directing the police to remove the respondent from the residence immediately or within a specified time;
- 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;
- 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.

Serving the Respondent

While an EPO takes effect immediately on granting, its provisions are enforceable only when the respondent has actual notice of the order. Actual notice occurs when the respondent has been personally served with the order or there are other circumstances that, in the opinion of the court, provide the respondent with actual notice. The police are obligated to serve a copy of the EPO on the respondent as soon as reasonably possible. Where a person has made an application for an EPO on behalf of a claimant, they are required to provide a copy of it to the claimant.

Sometimes it is impractical to personally serve a copy of the EPO on the respondent. The Regulation (section 8) allows a designated person to apply to a judge or justice of the peace for an order for substitutional service. This application has to be supported by evidence as to why it is impractical to serve the respondent and to propose a method of service that is likely to bring notice of the EPO to the respondent.

Affidavit of Service

Police must serve the EPO unless the court has authorized some other form of service. After the respondent has been served by police, the police fill out the affidavit of service. The affidavit of service www.albertacourts.ab.ca/pc/civil/forms/CTS1451.pdf and the attachments must be commissioned by the same commissioner for oaths at the same time. The original affidavit of service should be filed with the clerk of the court in advance of the court date to ensure that the document makes it onto the court file in time for the court date.

A sample affidavit of service follows on the next page.

Affidavit of Service – Sample

Court File No.:

Affidavit of Service

I, _____
name of server occupation
of _____, Alberta
City/Town

MAKE OATH AND SAY/SOLEMNL AFFIRM AND DECLARE
(Personal Service)

THAT I did on _____,
yyyy/mm/dd
serve the Respondent _____,
with a true copy of the within Emergency Protection Order and _____,
any other documents
by leaving the said document(s) with _____,
name of person left with
at _____, Alberta.
complete address

OR,

(Substitutional Service - to be completed only if an Order for Substitutional Service has been granted)

THAT I did on _____,
yyyy/mm/dd
serve the Respondent _____,
with a true copy of the within Emergency Protection Order, by

- (a) leaving a copy with _____
who is able to bring it to the Respondent's attention;
- (b) leaving a copy with _____
with whom the Respondent is residing;
- (c) leaving a copy at the respondent's residence at _____
- (d) posting the copy in a public place, namely _____
- (e) publishing it in _____ on _____
name of newspaper yyyy/mm/dd
- (f) sending it by electronic mail to the Respondent's e-mail address at _____
- (g) Other: _____

Sworn/Affirmed before me

on _____,
yyyy/mm/dd
at _____, Alberta. _____
Signature

Commissioner of Oaths
for the Province of Alberta

Print Name and Expiry

Completed Affidavit of Service must be filed with the Clerk of the Court

Followup – What You Need to Do after an Emergency Protection Order is Granted

Once the justice of the peace or judge reviews your application and grants an order, the EPO is in effect, however the respondent **must be served** before the conditions on the order are enforceable.

If the order is granted in provincial court, the clerk's office will provide you with a copy of the order and any conditions granted.

- Ensure that order and conditions are correct.
 - Note the expiry date and the review date.
 - ***Ensure that enough copies of the order are made: for the claimant, the respondent, the police for affidavit of service, and other relevant parties, e.g. lawyers.
- Contact your local police to serve the respondent** – ensure that they are provided with all necessary documentation (i.e. original copy, and affidavit of service). **The claimant should not serve the respondent.**
 - Once the respondent is served, the police will enter the order and the conditions on the Canadian Police Information Centre (CPIC) system. They are now enforceable.
 - If the police are unable to contact the respondent, they may need to apply for an order of substitutional service.
 - If someone else is directed by the court to serve the order, ensure that a copy is forwarded to police for CPIC and that an affidavit of service is completed and filed by police with the Court of Queen's Bench.
 - When EPOs are granted, there is a court date set within nine working days (for the Court of Queen's Bench to review the EPO). The review date is on the bottom of the EPO. Be aware not to confuse the expiry date (also on bottom of EPO) and the review date.
 - The claimant should attend the Court of Queen's Bench for the review or have a lawyer appear on her/his behalf. Not showing up or not having legal representation attend for the claimant could result in the EPO being revoked.

The Review of EPOs by the Court of Queen's Bench

The EPO must be scheduled for review by the Court of Queen's Bench no later than **nine (9) days** after the granting of the EPO, regardless of how the application was made. The claimant **must** attend the review or have legal representation on the review date at the Court of Queen's Bench. Legal aid is provided free of charge for review of EPOs regardless of financial qualifications.

Upon granting the EPO, the judge or justice of the peace forwards a copy of the order and all supporting documents, including notes, to the Court of Queen's Bench. A transcript of the EPO application is always made and forwarded to the Court of Queen's Bench. The review hearing at the Court of Queen's Bench is based on all the evidence that was before the judge or the justice of the peace who made the order. In addition, the justice may allow additional evidence to be presented. During a telephone application for an EPO, it may be appropriate, in certain circumstances, to have the claimant actually give sworn testimony to the justice of the peace. Once transcribed, this will give the Court of Queen's Bench direct evidence for the review.

Regardless of whether the claimant or the respondent are in attendance at the review hearing, the Court of Queen's Bench may:

- revoke the EPO;
- direct that an oral hearing be held;
- confirm the EPO. This turns the EPO into an order of the Court of Queen's Bench; or
- revoke the order and grant a Queen's Bench protection order with appropriate conditions which may be different than the EPO conditions.

If the claimant and respondent both want to terminate the EPO, they are both required to go before the Court of Queen's Bench and apply for a consent order.

Breach of EPOs

A protection order under PAFVA is an order of the court and per section 13, it is an offence to obstruct someone from carrying out a duty under a protection order or to breach a protection order. Penalties for committing such an offence under PAFVA include:

- fines up to \$5,000 and/or possible jail time for a first offence;
- mandatory jail time ranging from 14 days to 18 months for a second offence; and
- mandatory jail time ranging from 30 days to 24 months for third and subsequent offences.

This does not apply to situations which would be enforced through the Maintenance Enforcement Program, such as order conditions that require money to be paid.

If you have an EPO in place and the respondent is NOT following the conditions of the order, contact the police in your area.

Queen's Bench Protection Order (QBPO)

Queen's Bench protection orders may be obtained in two ways:

1. through review of an EPO; or
2. by direct application to the Court of Queen's Bench on notice to the respondent.

These orders can be in effect for up to one year and have potential to be extended by the justice, if required and warranted, for further periods of up to one year. The court may provide permission for a claimant to be represented by someone other than a lawyer when the claimant applies directly to the court for the order. This would only occur under unusual or unique circumstances.

A QBPO, similar to an EPO, can provide following provisions:

- restrain the respondent from attending at or near, or entering any place attended regularly by the claimant or other family members (including the residence, property, business, school or place of employment);
- restrain the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to family violence. Note: this is to be interpreted as prohibiting contact by any means, including through a third party, unless the order expressly provides otherwise;
- grant the claimant and other family members exclusive occupation of the residence;
- restrain the respondent from making any annoying or alarming communication including personal, written or telephone contact or contact by any other communication device directly or through the agency of another person, to the claimant and other family members or their employers, employees, coworker or other specified persons;
- direct a peace officer to remove the respondent from the residence within a specified time;
- direct a peace officer to accompany a specified person to the residence to supervise the removal of personal belongings;
- direct the seizure and storage of weapons that have been used or threatened to be used to commit family violence; and
- any other provisions that the court considers appropriate.

In addition, a QBPO can do the following:

- require the respondent to reimburse the claimant for monetary losses suffered by the claimant and child as a direct result of the family violence. This could include loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under PAFVA;
- grant either party temporary possession of personal property, including a vehicle, chequebook, bankcards, children's clothing, medical insurance cards, birth certificates, immunization cards, identification documents, keys or other necessary personal effects;
- restrain either party from taking, converting, damaging, or otherwise dealing with property (animals are deemed personal property) the other party may have an interest in;
- require the respondent to post a bond to secure compliance with the terms of the order;
- order respondents to receive counselling and/or require other family members to receive counselling;
- authorize the claimant to take a child to counselling without the consent of the respondent.

How to obtain a QBPO

A claimant or person on behalf of the claimant can apply directly to the Court of Queen's Bench on notice to the respondent for a QBPO. Additionally, a QBPO can be obtained from the review of an EPO which is scheduled within nine (9) working days of the EPO being granted.

Application for a QBPO

PAFVA clarifies that any person, with leave or authorization of the justice, may apply on behalf of a claimant, when the claimant will not provide their consent, or is unable to do so (e.g. incapacitated or minor). The Rules of Court (R. 12.30) require an application for a QBPO be made by filing an originating application, or where a proceeding has already been commenced, by filing a family application in accordance with R. 12. 44. Either one must be accompanied by an affidavit or a questionnaire.

Filling Out the Forms

The court form is often the first thing a justice sees, and this will be your first opportunity to provide the relevant information. To ensure that your forms are filled out correctly, here are a few basic tips:

- all forms are available online and should be filled out on the computer;
- do not fill the forms out by hand unless absolutely necessary;
- always type out the full name of the month when giving a date unless the form requires otherwise (there is NO standard order of day/month/year so 02/03/04 could be February 3 2004 or March 4, 2002 or any other combination);
- most forms are regulated forms and therefore cannot be altered or changed;
- when giving the claimant's name, capitalize the surname to avoid confusion;
- be as specific as you can with the information you are giving; and
- all information should be based on facts as opposed to opinions (Example: It is your opinion if you state "the man was drunk." It is a statement of fact if you state "the man was slurring, stumbling, smelled of alcohol and had red eyes.").

There are two forms to complete when applying for a QBPO:

1. Either an originating application www.albertacourts.ab.ca/forms/CTS2746.pdf or a family application: www.albertacourts.ab.ca/forms/CTS3836.pdf; and
2. a QBPO questionnaire (which can be used instead of an affidavit in support) www.albertacourts.ab.ca/forms/CTS2747.pdf

Samples of these forms are on the pages that follow.

Originating Application for a Queen's Bench Protection Order – Sample

Form 7
Alberta Rules of Court
Rule 12.30(a)

COURT FILE NO. _____

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE _____

CLAIMANT _____

RESPONDENT _____

DOCUMENT **Originating Application**
Protection Against Family Violence Act

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT _____

NOTICE TO THE RESPONDENT

This application is made against you. You are a Respondent.
You have the right to state your side of this matter before the Court.
To do so, you must be in Court when the application is heard as shown below:

Court Date: _____

Time: _____

Where: - Select one - Indicates court locations across the province

Before Whom: Presiding Justice in Family Law Chambers

Go to the end of this document to see what else you can do and when you must do it.

Basis for this Claim

1 . The Claimant relies on the following grounds or reasons for making this application:

(Give a brief statement of your reasons for bringing this application)

(a) The Claimant alleges that the Respondent has subjected the Claimant to family violence.

(b)

Remedy Sought

2 . A Queen's Bench Protection Order under the *Protection of Family Violence Act* against the Respondent.

Affidavit of other evidence to be used in support of this application

3 . The Claimant has filed a _____ - Select - _____ in support of this application, sworn/affirmed on

Select allows you to choose, affidavit or questionnaire as well as the date _____

4 . The Claimant intends to rely on the following other evidence, copies of which are served with this originating application:

Applicable Acts and Regulations

5 . Section 4 of the *Protection Against Family Violence Act*;

6 . Rule 12.30(a) of the *Alberta Rules of Court*.

WARNING

If you want to respond to this originating application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you do not come to Court on the date and time shown above either in person or by your lawyer, the court may give the Claimant what the Claimant wants in your absence. You will be bound by any order that the Court makes, or another order might be given or other proceedings taken which the Claimant is entitled to make without any further notice of them to you.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must:

- Swear or affirm an affidavit;
- File the affidavit or other evidence with the Court; and
- Serve the affidavit or other evidence on the Claimant a reasonable time before the originating application is scheduled to be heard or considered.

Queen's Bench Protection Order Questionnaire – Sample

Form FL-13

Rule 12.31 and section 4 of the
Protection Against Family Violence Act

COURT FILE NO. _____

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE _____

CLAIMANT(S) _____

RESPONDENT _____

DOCUMENT **Queen's Bench Protection Order Questionnaire**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Relationship between Claimant and Respondent

(specify your relationship to the Respondent)

Date and action number of any previous legal proceedings relating to family violence and whether or not an order was granted.

Year/Month/Day

Action Number

Order Granted

Yes No

Yes No

Names and date(s) of birth of child(ren) in the custody of the Claimant:

(list full name and birthdate (yyyy/mm/dd) of each child)

(a)	_____	_____
	Full Name	DOB (yyyy/mm/dd)
(b)	_____	_____
	Full Name	DOB (yyyy/mm/dd)
(c)	_____	_____
	Full Name	DOB (yyyy/mm/dd)
(d)	_____	_____
	Full Name	DOB (yyyy/mm/dd)

REASONS FOR REQUESTING A PROTECTION ORDER:

*[Set out details of why you need a protection order against the Respondent stating all **relevant** facts, including the dates, nature and history of family violence, whether any weapons(s) were involved, and if so, the type of weapon(s), which prompted this application]*

I REQUEST THE QUEEN'S BENCH PROTECTION ORDER INCLUDE THE FOLLOWING CONDITIONS:

1. The Respondent is restrained from attending at, entering, or being within 200 metres from the following places:
- (a) the Claimant's/family member's residence: *(address)*

 - (b) the Claimant's/family member's place of employment: *(address)*

 - (c) the Claimant's/family member's other addresses:

or from being within 100 metres of the Claimant and family members anywhere in the Province of Alberta.

2. The Respondent is restrained from contacting the Claimant or associating in any way with the Claimant. The Respondent is further restrained from subjecting the Claimant to family violence.

3. The Claimant and other family members are granted exclusive occupation of the residence located at: *(address)*
- _____
- for *(specify time period)* _____
4. The Respondent shall reimburse the Claimant in the amount of \$ _____ for monetary losses for the following reasons:
- _____
5. The Claimant Respondent _____ *(name)* is granted temporary possession of: _____ *(specify personal property)*
6. The Claimant Respondent _____ *(name)* may not take, convert, damage or otherwise deal with: _____ *(specify property)*
7. The Respondent may not make any communication likely to cause annoyance or alarm to the Claimant, including personal, written or telephone contact or contact by any other communication device, directly or through the agency of another person, with the Claimant and other family members or their employers, employees, co-workers or the following specified persons:
- _____
8. A peace officer shall remove the Respondent from the residence located at:
- _____ *(address)*
9. A peace officer shall accompany _____ *(name)* to the residence located at _____ *(address)* _____ *(specify time period)* to supervise the removal of personal belongings.
10. The Respondent shall post the following bond: *(specify bond)*
- _____
11. The Respondent shall attend the following counselling: *(specify)*
- _____

12. The child _____ is authorized to attend counselling
(name)
without the consent of the Respondent.

13. A peace officer shall seize and store the following weapons: (specify weapons)

14. Other: (specify)

I, _____
solemnly declare that the facts set out in this document are true. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me to be true

on _____

at _____, Alberta.

(Signature of Claimant)

(Commissioner for Oaths in and for the Province of Alberta)

(Print name and expiry/Lawyer/Student-at-Law/
Commissioner or JP)

NOTE: It is an offence to make a false declaration.

Serving the Respondent – QBPO

A respondent is considered to have “actual notice” of the provisions of an order granted after the review of an EPO or a QBPO if the respondent was served with a copy of the order, the respondent was in attendance in person or by conference telephone call when the order was granted, or there are any other circumstances that, in the opinion of the court, would have provided the respondent with actual notice.

If the respondent is not in court when the justice grants an order, the claimant is responsible for arranging it to be served on the respondent. The **claimant should never serve the order on the respondent**, as this could increase the risk for the claimant. Police must serve the emergency protection order but are **not required** to serve the Queen’s Bench protection order, though they may offer to.

The use of a process server or third party will suffice. An affidavit of service www.albertacourts.ab.ca/pc/civil/forms/CTS1451.pdf needs to be completed and filed regardless of who serves the documents. It is important that the QBPO (or an order revoking the EPO) be properly registered with the police by the claimant or the person helping them. This ensures the police have an accurate record of the current order in their system (the Canadian Police Information Centre system – CPIC), and are able to act quickly if the order is breached.

A sample affidavit of service can be viewed on page 12 of this booklet.

Breach of a QBPO

A protection order under PAFVA is an order of the court and per section 13, it is an offence to obstruct someone from carrying out a duty under a protection order or to breach a protection order. Penalties for committing such an offence under PAFVA include:

- fines up to \$5,000 and/or possible jail time for a first offence;
- mandatory jail time ranging from 14 days to 18 months for a second offence; and
- mandatory jail time ranging from 30 days to 24 months for third and subsequent offences.

This does not apply to the breach of the conditions of an order that requires money to be paid. In such a situation, the obligation would be enforced using the Maintenance Enforcement Program.

Warrant Permitting Entry (WPE) – a type of warrant under PAFVA

The judge may issue a WPE upon application **by police** when satisfied by information made under oath that there are reasonable and probable grounds to believe that:

- the person providing the information under oath (e.g. police officer) has been refused access to the family member; **and**
- that the family member may have been the subject of family violence; **and**
- that the family member will be found at the place to be searched.

The WPE allows the police to enter the premises named in the warrant to search for, assist or examine a family member (claimant) and remove them from the home with their consent (for the purpose of assisting or examining the family member). The police can apply for this warrant by phone.

Frequently Asked Questions

Definitions

- 1. Who is the “claimant”? Who is the “respondent”?**
 - A “claimant” is a family member **for whom** a protection order is sought or granted.
A “respondent” is a family member **against whom** a protection order is sought or granted.
- 2. What if the respondent is a minor?**
 - The terms of a protection order may still be applied.
- 3. What does the “leave of a judge” refer to under PAFVA?**
 - It means the judge has given permission for someone else to apply for a protection order on behalf of a claimant.
- 4. Does PAFVA recognize and include same-sex couples in the definition of family?**
 - The definition of “family member” includes persons who are or have been adult interdependent partners of one another or who are residing or have resided together in an intimate relationship.
 - Same-sex partners fall under the definition and would be able to use the *Protection Against Family Violence Act*.
- 5. Is mental abuse and threats of abuse addressed under the definition?**
 - The definition of “family violence” includes any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member.

Protection Orders

- 6. What professionals can make an application for an emergency protection order (EPO)?**
 - Peace Officers – Police.
 - Human Services child intervention staff.
 - Other professionals can apply in person on behalf of the victim through the regular court application process, with leave of the judge. This may apply to situations where the claimant is unable to represent him/herself (e.g. the claimant is a minor) or is incapacitated and cannot provide consent. This would **not** apply when the claimant is capable of providing consent, but chooses not to.
 - Generally speaking it is the police, designated Human Services child intervention staff or the claimant that apply for an emergency protection order.
- 7. When police or child intervention staff are assisting victims of family violence, do they need the victim’s consent to apply for an emergency protection order?**
 - Yes, if it is not possible to obtain the person’s consent (e.g. because they lack capacity), leave of the judge may be requested.
 - Police may lay charges in conjunction with an application for an EPO. The police do not require consent to lay charges for a criminal offence in circumstances surrounding family violence.

8. How do claimants get an emergency protection order?

- Anyone can apply to the courts for an EPO with leave from a judge. Victims of family violence can call for professional help from Legal Aid (at no charge), police or Human Services child intervention staff when family violence occurs, or they can go directly to the provincial court and make application.
- Police will investigate the situation (when they are called to the situation) and when appropriate, with the claimant's consent, will apply to a justice of the peace for an emergency protection order. (Child intervention staff can also apply for the protection order in the same way, after court hours.) If the justice of the peace grants an emergency protection order (EPO), the police will serve the respondent.
- Additionally, victims of family violence can go directly to the courts and request a Queen's Bench protection order from the Court of Queen's Bench during regular court hours. This application is made on notice to the respondent, or can be made without notice, if the court so orders. In this case, if the order is granted, the victim is responsible for arranging it to be served on the respondent (for example, they could request police assistance or hire a process server). **Victims should never serve the order to the respondent, as this would place her/him at increased risk.**
- If a respondent is present in court when an order is granted, they are considered to have notice of the application and do not need to be served.
- When Police are made aware of the order, they can enter it into the Canadian Police Information Centre (CPIC) system, making the provisions enforceable.

9. What are the costs of an EPO or QBPO?

- There are no fees to the claimant when applying for an EPO or when an EPO is granted.
- There are no application fees for the claimant when applying directly to the Court of Queen's Bench (QBPO) for a protection order, or when the protection order is granted.

10. Can a protection order be stopped once it is in place if the claimant or the respondent wants the order stopped?

- The EPO will be scheduled for review by a justice of the Court of Queen's Bench not more than nine (9) working days after the EPO has been granted by the justice of the peace.
- The claimant and respondent can apply together to "stop" the order in Queen's Bench Chambers prior to review.
- If a claimant wants to change an order granted by the Court of Queen's Bench (confirmed EPO or Queen's Bench protection order that has been granted), a claimant may apply to the court for a new Queen's Bench protection order, which, if granted, could change or terminate the provisions of the existing order.
- If a respondent wants to change or stop a change an order granted by the Court of Queen's Bench (confirmed EPO, or Queen's Bench protection order) once it is in place, an application for appeal must be filed within the appropriate timelines.

11. Are community police considered to be peace officers and able to apply for emergency protection orders?

- Yes, community police fall within the category of "peace officer." PAFVA defines the term "peace officer" to include police officers (as defined in the *Police Act*), military police, and First Nations police officers.

12. Who serves the respondent?

- In order for the conditions of the order to be enforceable, an emergency protection order must be served on the respondent as soon as reasonably possible by a peace officer or by any other person that the judge directs.
- In the vast majority of cases it will be the police officer who serves the respondent.
- If the respondent is not present when the order is granted, the claimant is responsible for arranging the Queen's Bench protection order to be served (advisably through a neutral third party or professional server). **The claimant should under no circumstance serve the respondent, as this could place her/him at greater risk.**
- It is considered sufficient notice if a respondent is present when an order is granted

Protection Orders – Enforcement of Orders and Conditions

13. What is the key difference between an EPO and QBPO?

- The key difference is that an EPO is granted because there is a need for immediate protection for the claimant. Because of this immediate need, it may be applied for without notice to the respondent. An application for an EPO may be made either in person or by phone (with the assistance of the police or Human Services child intervention staff).
- The EPO is reviewed by the Court of Queen's Bench and the respondent is provided with an opportunity to appear and give evidence at the review. The judge has several options when the EPO is reviewed: extend the order, revoke the order, change the order, or order an oral hearing be held.
- An application for a QBPO is made with notice to the respondent. If granted, it may be in force for up to one year, with the possibility of extension for further one-year periods.
- QBPOs provide additional provisions beyond those of the EPO (see page 15).

14. How are conditions on protection orders (EPO, QBPO) enforced and who enforces them?

- An order under PAFVA is enforceable in Alberta as it is provincial legislation.
- A protection order may be enforced under section 13 of PAFVA.
- Breaches of orders are enforced by the police.
- **It is important to notify police immediately if an order is breached.**

15. What are the consequences of failing to follow (breaching) a protection order?

- It is an offence under PAFVA to:
 - obstruct someone from carrying out a duty under a protection order; or
 - breach a protection order.
- Penalties for committing such an offence under PAFVA include:
 - fines up to \$5,000 and/or possible jail time for a first offence;
 - mandatory jail time ranging from 14 days to 18 months for a second offence; and
 - mandatory jail time ranging from 30 days to 24 months for third and subsequent offences.

16. Could monetary conditions be included in the order, and could they include payment of mortgage, utilities or legal fees?

- Yes, the Queen’s Bench justice makes the decision about what conditions apply to the QBPO given the specific circumstances of each case.

17. Who enforces monetary reimbursement to claimants?

- The Maintenance Enforcement Program enforces breaches where monies are to be paid to claimants. Monies could include damages, support, legal expenses, accommodations etc. and are to be paid to the claimant and other family members.

18. If counselling is a condition of the Queen’s Bench protection order and the respondent cannot pay, is the respondent in violation of the condition?

- Yes. However, the court should be made aware of any reason which might affect the respondent’s ability to comply with any condition at the time the order is being made.
- If counselling is ordered, and the respondent does not attend, then the respondent is in violation of the order.
- There are no resources available under the *Protection Against Family Violence Act* to cover counselling costs for claimants, respondents or other family members.

19. Does a protection order that restrains the respondent from going to the claimant’s residence transfer to the claimant’s new residence when a claimant moves, or does the protection order refer to a specific address?

- The order will usually contain an address. Therefore, it is site specific.
- If the claimant moves to another address, it is their responsibility to seek a new provision for the order or have the order amended.

20. What happens if the claimant contacts the respondent?

- The court order will not be revoked if the claimant contacts the respondent.
- If the claimant allows the respondent back into the home, the respondent is technically in breach of the order, regardless of the claimant’s intentions.
- The respondent may be liable and normal breach procedures would apply.
- While the order remains in place, the claimant’s behaviours will be considered in how the courts proceed with the breach.
- The conditions are included on an order and it is expected that both parties would demonstrate responsibility in upholding the order.

21. Are police informed of all EPO and QBPO orders?

- Not always. It is important to ensure that police are provided a copy of the order so that it is entered on their system.

22. Can an EPO be used for neighbours and coworkers?

- No, unless the neighbour or person you work with falls within the definition of “family member.”

23. Can EPOs and QBPOs be enforced on reserves?

- All provisions **except** exclusive occupancy of the residence can be enforced on reserves.

24. Is there a limit to the number of EPOs a claimant can apply for?

- No, the number of EPOs or other protection orders a person has had in the past should not preclude a claimant from getting an EPO.
- Assuming the facts of a situation are different, each will be viewed as a new situation to allow the most appropriate action or remedy.

Legal Issues and Questions

25. Does the claimant have to be present at the Court of Queen's Bench review hearing?

- No, the *Protection Against Family Violence Act* allows a justice of the Court of Queen's Bench to grant an order whether or not the claimant and/or the respondent are present.
- However, the Court of Queen's Bench will often look for direct evidence by the claimant (provided by the transcript of the EPO application). Otherwise, the claimant should consider providing a sworn affidavit, at least in cases where affidavit evidence has been filed by the respondent.

26. Does the claimant need legal representation for the review of an EPO at the Court of Queen's Bench?

- No, however it is advisable to seek legal counsel. The Queen's Bench review (scheduled within nine working days) of an EPO is one of these instances. The normal rules of eligibility for Legal Aid service do not apply to claimants for the EPO review at the Court of Queen's Bench. For the purpose of the review, Legal Aid Alberta will provide a lawyer for both the claimant and respondent.
- Note that Legal Aid will also provide a lawyer upon request for the respondent for the review at the Court of Queen's Bench.

27. If more than one court order exists, do court orders under PAFVA legislation take precedence?

- Yes, because PAFVA is to provide immediate protection, and is very specific and time limited, it takes precedence over any other order dealing with the same subject matter (including family court, parenting orders).
- When a Queen's Bench justice or justice of the peace is hearing an application, they should be advised of any other order known at the time to determine how it impacts the order being considered under PAFVA legislation.

Protection Tools

28. What is the difference between a protection order and a restraining order or a peace bond?

- **Protection orders** are issued under the *Protection Against Family Violence Act* and are granted where there has been family violence as described in PAFVA. An emergency protection order (EPO) can be obtained from a provincial court judge or a presiding justice of the peace on a 24-hour basis and can include such provisions as the respondent being required to leave the home and not contact the claimant.

- A Queen’s Bench protection order can provide the same provisions but has additional powers including the ability to order a respondent to repay the claimant for monetary losses resulting from the family violence; a respondent to post a bond; that either the claimant or respondent have temporary possession of a specified personal property; and that either party be prohibited from dealing with personal property. A Queen’s Bench protection order can also order counselling for the respondent.
- There is an automatic review process that requires all EPOs be scheduled for review by the Court of Queen’s Bench within nine (9) working days. The *Protection Against Family Violence Act* also allows for a claimant to apply directly to the Court of Queen’s Bench for a protection order.
- **A restraining order** is sought in the Court of Queen’s Bench and may benefit from the assistance of a lawyer. The process requires the use of an affidavit or completed questionnaire specified by the court. While these orders can be obtained without notice to the respondent, they are only available during court hours. Therefore, the family member requiring protection may be left in a situation of danger until a restraining order can be addressed through the court.

Restraining orders that are made without notice to the respondent are initially short term and require that the respondent be served and that the parties return to court for the order to be considered again. Breaches of restraining orders can only be dealt with through the court’s power to cite for civil contempt. The Criminal Code does not deal with a breach of a restraining order.

- **A peace bond** is issued under the Criminal Code. It is granted by a provincial court judge where grounds exist to believe that an individual will cause injury to a person, damage the property of another person, or will injure the spouse or child of another person. An application for a peace bond must be supported by information and there must be an in-person court hearing.

The peace bond can be in force up to 12 months and may contain conditions a judge considers necessary for ensuring the defendant’s good conduct. If the defendant refuses to sign a peace bond, he/she can be imprisoned for up to 12 months. The judge must consider inclusion of specific terms respecting possession of firearms, ammunition or explosives, non-attendance at certain premises and non-communication. A peace bond may be obtained under the Criminal Code. It may not be ideal because it can take considerable time to obtain. It can be applied and used in addition to a protection order under PAFVA.

Warrant Permitting Entry

29. Can a warrant permitting entry (WPE) be used for the purpose of arrest or search and seizure of evidence?

- No, the WPE only provides for a peace officer to enter, search and examine the person in question, and remove the person with the person’s consent.
- The power of police to arrest and seize remains the same as in other situations.

30. Does a warrant permitting entry (WPE) have to be used only at a specific address?

- Yes.
- The WPE may be granted where the judge is satisfied that where there has been a refusal for access to a family member experiencing family violence, and that the family member will be found in the place specified to be searched.

31. Where can I obtain my own copy of the *Protection Against Family Violence Act*?

- You can obtain a copy from the Queen's Printer Bookstore or online at www.qp.alberta.ca/Laws_Online.
- To order by telephone – call the toll-free Service Alberta government number 310-0000, request the Queen's Printer, and ask for a copy of the *Protection Against Family Violence Act*.

