Federation of Ontario Law Associations
Fédération des associations de barreau de l'Ontario

March 13, 2026

"The Voice of the Practising Lawyer in Ontario"

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Via Email: LawCommission@lco-cdo.org

Dear Ms. Snowdon:

Re: Improving Protection Orders: Consultation Paper for Family, Child Protection, and Civil Law

1. Introduction

The Federation of Ontario Law Associations ("FOLA") represents Ontario's 46 county and district law associations and their practising members.

FOLA appreciates the opportunity to provide comments on the Law Commission of Ontario's (LCO) *Improving Protection Orders: Consultation Paper for Family, Child Protection, and Civil Law* (the "Consultation Paper").

FOLA supports initiatives aimed at reducing barriers for survivors of intimate partner and family violence to obtain protection orders preventing contact or communication from an abusive party.

FOLA takes very seriously the LCO's findings that particularly problematic barriers preventing access to protection orders include:

- lack of awareness that protection orders exist;
- the risk of retaliation;
- limited access to legal information and representation;
- onerous procedural requirements;
- high evidentiary thresholds; and
- pervasive doubt about the effectiveness of protection orders.

We note the Consultation Paper's finding that the overwhelming majority of applicants seeking protection orders are women.

Accordingly, reducing barriers to protection orders is particularly important for individuals who self-identify as women and for other survivors of intimate partner and family violence.

FOLA commends the LCO for the detailed research reflected in the Consultation Paper and broadly supports the exploratory initiatives identified to address deficiencies in Ontario's current protection order regime.

This submission provides commentary on several specific issues raised in the Consultation Paper. A lack of commentary on any particular issue should not be interpreted as disagreement with the LCO's analysis or as indicating that those issues are less important.

FOLA has also had the opportunity to review a draft of the impending submission prepared by the Toronto Lawyers' Association (TLA). We commend the TLA for its thoughtful and detailed work on their submission which we believe warrants important consideration by the LCO.

2. Dedicated Civil Protection Order Legislation

The Consultation Paper raises the question of whether Ontario should introduce dedicated civil protection order legislation rather than relying on existing statutes such as the *Family Law Act* (FLA), the *Children's Law Reform Act* (CLRA), and the *Child, Youth and Family Services Act* (CYFSA).

FOLA would welcome further investigation into whether a dedicated legislative framework for protection orders may be beneficial. However, we caution that this may pose implementation challenges, notably in smaller jurisdictions, where judicial resources are already being spread very thinly.

As the old adage goes: "In theory, there is no difference between theory and practice; in practice, there is." Working within and making improvements to the existing regime may be a sufficiently pragmatic, timely and cost-effective means of ameliorating some of the existing problems.

That being said, the TLA has advocated strongly for dedicated civil protection order legislation and has provided detailed submissions regarding same. We believe their commentary warrants serious consideration as well.

3. Access to Protection Orders

FOLA strongly supports efforts to reduce barriers to accessing protection orders.

The Consultation Paper raises the question of whether legislation should define “family violence” or related concepts for the purpose of protection order applications.

FOLA does not take a firm position that a statutory definition is required. Judges, when properly educated regarding myths and stereotypes surrounding intimate partner and family violence, remain well positioned to assess the evidence in the cases before them.

Creating rigid statutory definitions may risk introducing additional complexity into an already complex process. Similarly, legislating highly prescriptive lists of qualifying conduct could inadvertently encourage technical arguments in response to legitimate protection order claims. As an example, by suggesting that conduct which clearly generates reasonable fear does not fit neatly within a legislated category.

The current “reasonable fear” standard provides courts with a flexible and principled framework for evaluating these cases.

That being said, there may be benefit to a statutory, enumerated list of guiding factors, or examples of conduct that would constitute intimate partner and family violence, so long as such enumerated factors would not preclude judges from being able to exercise residual discretion.

4. Third-Party Applications for Protection Orders

The Consultation Paper also asks who should be able to apply for protection orders on behalf of individuals in need of protection, and whether courts should be able to consider granting protection orders without an application at all (that is: on their own motion).

When it comes to the first prong of this question: we recognize the peculiarity of the wording of the recent amendments per Bill 10, which require Regulations to clarify what categories of third parties will be permitted to apply for protection orders on behalf of survivors of intimate partner and family violence.

FOLA notes that in criminal proceedings, peace bonds under section 810 of the *Criminal Code* of Canada may be sworn by third parties who reasonably fear that a defendant may cause harm.

FOLA does not believe that regulatory restrictions should be overly narrow regarding who may apply for a protection order on behalf of another individual, provided that the consent of the person seeking protection and/or leave of the court is required.

In terms of the second question, we do believe that courts should have clear authority to issue an interim protection order on their own motion. Courts have a role to play in ensuring the wellbeing of the public. If a court finds that there are reasonable grounds to believe that a member of their community is at risk, the court should have the clear statutory authority to issue a protection order without the formal requirement of a written application being before it.

5. Procedural Barriers in Protection Order Applications

Currently, the *Family Law Rules* generally require motions to be brought within the context of an application. In practice, this requirement can result in duplication of information across multiple forms and procedural steps.

In protection order matters, where urgent or emergency relief is often required, FOLA believes this requirement is a form of procedural red tape that should be eliminated. Interim motions for restraining orders should be able to be brought without a parent application.

Judges dealing with such motions are well positioned to provide direction regarding the appropriate procedural steps that should follow with regard to service and filing of parent application pleadings once immediate safety concerns have been addressed.

Allowing interim protection order motions to proceed in this manner would remove procedural barriers while preserving judicial oversight. Amendments to the *Rules* could be made to clarify that Court Services should not reject interim motions filed for protection orders that are filed without a parent application.

6. Evidentiary Challenges in Protection Order Applications

The Consultation Paper identifies inconsistencies in the application of the "reasonable fear" standard and notes that some applicants report not being believed when seeking protection orders.

With respect, we do not believe that Ontario judges are routinely choosing to actively *disbelieve* applicants. We do, however, recognize that a concerning number of applications are being dismissed due to, from the court's perspective, a lack of sufficient evidence. We strongly believe that proactive steps should be taken remedially to address this.

It is submitted that one potential issue may be a disconnect between the type of information applicants believe they need to provide to the court and the information that courts expect to receive in order to grant a protection order.

There are many possible reasons for this disconnect. Survivors of intimate partner and family violence may fear retaliation if certain details become known to the responding party. Others may find it extremely difficult to recount traumatic experiences in formal legal documents.

It has been observed that many affidavits in support of protection order applications use conclusory language to indicate that the applicant has experienced emotional, physical, financial, or psychological abuse, but may not provide the level of detailed particulars—such as dates, times, and examples of specific incidents—that courts often expect.

Where such gaps exist, this may result in otherwise legitimate protection order requests being dismissed.

FOLA suggests that legislation could be considered which would direct courts, in time-sensitive or emergency cases, to conduct informal, sworn *viva voce* inquiries with applicants—preferably *in camera*—where the written materials alone may provide insufficient evidence from the court's perspective.

Such a process would allow judges to ask limited clarifying questions before determining whether a temporary protection order should be granted on an interim, without-prejudice basis.

This would still fulfil the requirements of procedural fairness for the responding party, as an affidavit would still be required for the fulsome hearing upon due service to the respondent—but with the key difference being that in the interim, the applicant would have a police-enforceable protection order in place.

7. Expert Evidence and Risk Assessments

The Consultation Paper explores whether expert reports and risk assessments should play a greater role in protection order proceedings.

In principle, FOLA supports the expanded use of expert evidence where it assists courts in understanding risk factors associated with intimate partner and family violence.

However, practical considerations must be acknowledged. Expert reports are resource-intensive and often associated with significant delays in family law proceedings.

As indicated in the Consultation Paper, such reports are very infrequently used now. Such items are likely utilized primarily by those litigants that can afford to rely on them, and it is difficult to foresee how that could change in the future.

Existing court-ordered reports in family law—such as reports prepared under section 112 of the *Courts of Justice Act* by the Office of the Children's Lawyer (OCL) or assessments under section 98 of the *Child, Youth and Family Services Act*—already experience significant wait times.

In the case of protection orders, we are not opposed to the greater usage of such tools, but we would not want to see this cause any unnecessary delays for survivors of intimate partner and family violence who need relief urgently.

8. Procedural Gatekeeping at the Filing Stage

FOLA submits that there is another, overlooked way that restraining orders can be *de facto* "dismissed": at the physical or virtual filing counter. It is unlikely that quantitative data exists on this issue, but it is suspected that many protection order applications are rejected at the administrative level for not meeting procedural requirements.

While administrative review of filings serves an important function, there may be merit in considering whether urgent protection order materials that contain procedural deficiencies should nevertheless be placed before a judge for direction. Important substantive information should not be turned away at the filing counter simply because a vulnerable litigant forgot to check a box on a form.

In circumstances where a survivor of intimate partner and family violence is seeking time-sensitive relief, it may be preferable for the court to determine how the matter should proceed rather than requiring applicants to correct technical deficiencies before any judicial review occurs.

Reforms to the *Family Law Rules* or relevant practice directions could help to ensure that protection order requests are not delayed due to minor procedural omissions.

9. Cross-Examination by Self-Represented Parties

The Consultation Paper highlights cases in which respondents were permitted to personally cross-examine applicants in protection order proceedings.

FOLA shares the concern expressed in the Consultation Paper regarding this practice.

In criminal proceedings, section 486.3 of the *Criminal Code* of Canada restricts personal cross-examination by accused persons in cases involving allegations of violence or sexual offences.

FOLA suggests that similar procedural protections could be considered in family law proceedings involving allegations of intimate partner and family violence.

10. Enforcement of Protection Orders

The Consultation Paper identifies gaps in the enforcement of protection orders, including concerns that family court protection orders are not always entered into the Canadian Police Information Centre (CPIC) database.

FOLA strongly supports efforts to streamline and strengthen this process.

Section 127 of the *Criminal Code* already provides a mechanism for criminal enforcement of breaches of family court protection orders. Ensuring that protection orders are reliably recorded and accessible to law enforcement would significantly improve the effectiveness of this existing enforcement framework.

Addressing gaps in enforcement may also help restore confidence among survivors of intimate partner and family violence that protection orders are meaningful tools for ensuring their safety.

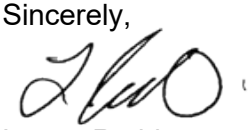
11. Conclusion

FOLA once again thanks the Law Commission of Ontario for its extensive work on the *Improving Protection Orders: Consultation Paper for Family, Child Protection, and Civil Law* and for the opportunity to provide input.

FOLA strongly supports initiatives that reduce barriers to protection orders and improve their effectiveness for survivors of intimate partner and family violence. We believe the Consultation Paper represents an important step toward improving access to justice and enhancing safety for vulnerable individuals across Ontario.

FOLA would welcome the opportunity to participate in any further consultations as the Law Commission of Ontario continues its work on this important issue.

Sincerely,



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