

# **Recognition and Enforcement of Canadian Domestic Violence Protection Orders**

## **Issues for the March 21-22, 2014 Meeting**

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In preparation for the March 21-22 meeting in Washington, D.C., I have highlighted some of the issues that I think we should discuss. But before I address those, let me say that as I drafted this memo, I realized a mistake I made in drafting the definitions section. I have attempted to correct it in this memo. For the purposes of this memo and for our meeting later this month, I propose that we substitute the two definitions below for the definitions of “Canadian protection order” and “protection order” that appear in the draft that Lucy Grelle sent you. Here are the substitute definitions:

Section 2. DEFINITIONS. In this [Act]:

(1) “Canadian civil protection order” means a judgment or a portion of a judgment, an injunction, or other order issued by a court of Canada under the laws of the issuing Province that prohibits a specified person from:

(A) being in physical proximity to a specified person or following a specified person from place to place;

(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.

...  
(5) “Protection order” means an injunction or other order issued by a tribunal under the laws of the issuing State, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

For the rest of this memo and for the meeting later this month, assume that these are the definitions of those two terms in the draft.

At the meeting on October 25-26, 2014, we considered the following topics:

1. Should the act amend the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA) or exist as a separate act?
2. Should the act cover only *civil* domestic violence orders issued by Canadian *courts*?
3. Should the act distinguish among the types of courts from which the order issued?
4. Should the act recognize only the no-contact provisions of Canadian domestic violence protection orders?
5. What, if anything, should the act provide on challenges to the Canadian domestic violence protection orders that it recognizes?
6. Should the title of the act include the “enforcement” of Canadian domestic

violence protection orders?

This issues memorandum points out the ways in which this draft of the RECDVPO deals with those topics and others.

First of all, this draft reflects our consensus at the fall meeting that the act should include “and Enforcement” in its title (topic #6 above). Indeed, enforcement of protection orders from other jurisdictions is the thrust of both models for this act - the UIEDVPOA and the Uniform Enforcement of Canadian Judgments and Decrees Act (UCJDEA). At the fall meeting, therefore, we assumed that the absence of those two words reflected an oversight in the charge to the committee by the Scope and Program Committee. We also discussed requesting something from Scope and Program formally to broaden our charge to include not only the recognition but also “the enforcement” of Canadian domestic violence protection orders.

Secondly, this draft reflects the consensus at the fall meeting that the UIEDVPOA adequately provides for challenges to the enforcement of protection orders of other jurisdictions in its Section 3 on “Judicial Enforcement of Order” (topic #5 above). This draft on the recognition and enforcement of Canadian domestic violence protection orders, therefore, tracks Section 3 of the UIEDVPOA for its Section 3 on “Judicial Enforcement of Order.”

Also, this draft follows the consensus at the fall meeting that the act should exist primarily as a freestanding act, with some amendments to the UIEDVPOA as needed (topic #1 above). This draft does not make any recommendations for amending the UIEDVPOA, a topic that we should probably address at our March meeting.

It appears to me from this draft that a freestanding act is a good approach. We wondered at our fall meeting whether a freestanding act would simply repeat the provisions of the UIEDVPOA, making it worthwhile to consider revising the UIEDVPOA rather than drafting a freestanding act. However, in this draft, the act departs significantly from the UIEDVPOA in ways raised by topics ## 2, 3, and 4 above. If the committee agrees with the ways this draft reflects the resolution of those issues, then I think a freestanding act continues to make sense.

This draft departs from the UIEDVPOA most significantly in the definitions of “Canadian civil protection order” and “protection order.” (Refer to the substitute definitions in this memo). These definitions address topics ## 2 and 4 above.

The UECJDA provides more narrowly for recognition and enforcement of protection orders from other countries than the UIEDVPOA provides for the recognition and enforcement of protection orders from sister states. At the meeting in the fall, we concluded that for the most part, more narrow recognition and enforcement made sense in the international setting. Because the enforcing state would not be as familiar with protection orders from other countries as it is between jurisdictions within a country, an act that provides more narrow recognition between countries makes sense. Also, the UECJDA describes its narrow but important central goal of authorizing law enforcement to separate the parties who are who are the subjects of a protection order, and this draft adopts that central goal.

For example, unlike the UIEDVPOA, this draft recognizes only *civil* orders. See RECDVPO § 2(1) (substitute) for the definition of “Canadian civil protection order.” The UIEDVPOA, on the other hand, defines “protection order” more broadly to include criminal anti-stalking orders. See UIEDVPOA § 2(5). That provision raised concern among the commissioners, a concern that the international setting makes even more problematic. Likewise, the UIEDVPOA defines protection order to include orders from *tribunals*, which the act defines to include agencies. See §§ 2(5) and (8). This draft recognizes Canadian civil protection orders issued only by Canadian *courts*. RECDVPO § 2(1) (substitute). At our fall meeting, Darcy McGovern from the Uniform Law Conference of Canada assured the committee that because agencies were rarely involved in the process in Canada, that limitation would not make the ULC act less protective.

At our fall meeting we were most concerned about how the UECJDA limited its recognition and enforcement only to the no-contact provisions of the foreign order (topic #4 above). The UIEDVPOA, on the other hand, recognizes all parts of the protection order from sister states, even parts that the enforcing state could not have ordered. Significantly, the UIEDVPOA enforces the custody provisions of the sister state orders. See UIEDVPOA, Prefatory note. At the fall meeting we were inclined to depart from the approach of the UECJDA and recognize parts of the Canadian protection order in addition to the no-contact provisions but wanted to solicit the input of the VAWA office on this issue. In a telephone conference in February, the staffers who participated did not have strong feelings about the need to recognize custody or other parts of a Canadian protection order beyond the no-contact provisions. The participants underscored that their analysis could change, but they did not have strong objections to limiting the scope of international recognition to no-contact provisions.

This draft follows the approach of the UECJDA on recognizing only no-contact provisions. In the major departure from the UIEDVPOA, this draft defines “Canadian civil protection order” as the UECJDA defines “foreign civil protection order.” UECJDA § 9.1 and RECDVPO § 2(1) (substitute). By this definition, the RECDVPO recognizes only those parts of Canadian civil protection orders that deal with no-contact. As I have noted in the Prefatory Note, the UCCJEA and the article implementing the Hague Convention on Protection of Children, as well as the Hague Convention on the Civil Aspects of International Child Abduction, deal with international custody issues. The approach of this draft is to leave international custody issues to other bodies of law and provide more limited recognition and enforcement of Canadian civil protection orders.

In another major departure from the UIEDVPOA, this draft defines “protection order” more broadly by omitting the limitations of the definition of “protection order” to orders issued “under the domestic-violence, family-violence, or anti-stalking laws of the issuing State.” UIEDVPOA § 2(5). This limitation in the UIEDVPOA reflects the commissioners’ concerns that otherwise, the act might run afoul of provisions on criminal rendition. In light of the definition of “Canadian civil protection order,” the limitation of the UIEDVPOA to types of statutes under which the order was issued seems unnecessary. Because a Canadian civil protection order is limited to civil orders, imposing a limitation on the enforcing state through a narrow definition of “protection order” seems unnecessary.

In addition to the issues discussed above, here are some other issues that I think we should consider at our spring meeting:

1. What amendments, if any, should the draft provide to the UIEDVPOA?
2. How, if at all, should we address the issue of Canadian civil protection orders not written in English?
3. In the UIEDVPOA, the comments to Section 5 note that the individual who registered the protection order inform the enforcing state of any modification to the registered order. UIEDVPOA, § 5, comment, last sentence. This draft provides similarly for the individual who registers a Canadian civil protection order. RECDVPOA, § 5, comment, last sentence. Should this expectation be moved from the comments to the text of the draft?
4. The Transitional Provision in Section 9 is the same as the UIEDVPOA. But should it be re-written for more clarity?