

MEMORANDUM

To: 2015 Annual Meeting, Uniform Laws Conference

Re: Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act

From: Paul M. Kurtz, Chair
Suzanne Reynolds, Reporter
RECDVPOA Drafting Committee

Background:

This is a second reading of the act. The Drafting Committee began its work with the benefit of years of significant work on cross-jurisdiction recognition of domestic violence protection orders. In 1994, Congress passed the Violence Against Women Act (VAWA), which requires states to give full faith and credit to orders issued consistently with VAWA's provisions. In responding to this mandate in 2002, the Conference adopted the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (IEDVPOA), facilitating interstate recognition and enforcement of the domestic violence orders of other states. This Act has been adopted in 20 jurisdictions. In 2011, the Uniform Law Conference of Canada adopted the Enforcement of Canadian Judgments and Decrees Amendment Act (ECJDAA), which provides for the recognition of foreign protection orders.

More broadly, the Hague Conference on Private International Law has also studied cross-jurisdiction recognition of domestic violence protection orders. In March, 2012, the Conference issued the Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note. Through case studies based on actual incidents, the work explains and illustrates the problems and dangers created in a world without cross-border recognition of domestic violence protection orders. The Note also summarizes national protection order regimes and describes proposed and existing models of cross-border recognition, including VAWA, the IEDVPOA, and the ECJDAA. Since 2012, the Hague Conference has released the responses to its Questionnaire on the Recognition of Foreign Civil Protection Orders in a Summary of Member Responses and Possible Ways Forward. In February, 2015, the Conference published the responses and suggested that a group convene to make concrete recommendations about an international agreement.

While the Drafting Committee has worked against the background of all this work, its charge is narrow - to draft a statute which will facilitate the recognition of Canadian domestic violence protection orders. While the Joint Editorial Board on Uniform Family Law initially recommended an act on the recognition and enforcement of all foreign domestic violence protection orders, the final charge from Scope and Program was to facilitate recognition of Canadian orders only. The rationale for the narrowing of the scope of the Conference's project was that the Conference did not want to interfere with the ongoing Hague project on universal

inter-country recognition of domestic violence orders, but did feel that in light of the Canadian recognition of such orders from the United States and Canada's proximity to the United States, it would be appropriate to draft an act facilitating recognition of Canadian orders in this country.

Committee Work:

In addition to the Committee's two drafting sessions before last year's first reading of the Act, this past year we met in the fall in Washington, D.C. and had a final telephone conference this spring. It has received excellent assistance from extensive staff work detailing the content of the legislation in the states where the IEDVPOA has been adopted. Additionally, it has been significantly assisted by the advice and counsel of Darcy McGovern, Director of Legislative Services of Saskatchewan.

Committee's Resolution of Issues:

Title: The charge from Scope and Program to the drafting committee referred only to "recognition" of Canadian domestic violence protection orders. Because the thrust of both the Conference's 2002 Act and the Canadian act is enforcement of the orders of foreign jurisdictions, the Committee recommended the inclusion of the word "enforcement" in the title and this recommendation was approved by the Executive Committee.

Free-Standing Act v. Amendments to Conference's Existing Domestic Act: After considering whether a set of amendments to the domestic act would be sufficient or whether the Conference should propose a free-standing act as well as a package of amendments for those states already adopting the domestic act, the committee has opted for a free-standing act. Fewer than half the states have adopted the domestic act and, because of the committee's resolution of the substantive issues covered in the act, a parallel package of amendments to the domestic act would be fairly extensive and complicated. Additionally, several sections of the act differ from the Conference's existing domestic act. The reasons for the variance will be discussed during the Conference's consideration of this draft.

Enforcement and Recognition of Which Kind of Orders?

The Conference's 2002 domestic act (IEDVPOA) is not limited to civil orders. In fact, in defining the kind of domestic violence protection orders from other states that will be recognized and enforced, the act includes provisions in orders entered under anti-stalking laws, which the court may have issued under criminal statutes. On the other hand, the Canadian act (ECJDAA) recognizes only civil foreign protection orders. Because the current act can be seen as a reciprocal one designed to mirror the Canadian act under which our domestic violence orders will be recognized and because the enforcement of another country's criminal laws may raise more serious issues than enforcement of their civil laws, the draft limits enforcement to civil orders entered in Canada.

Courts or Tribunals?

The Conference's domestic act recognizes orders entered not only by courts, but orders entered by a "tribunal," which includes an "agency ... or other entity authorized by law ... to establish, enforce, modify, or register a domestic protection order." By contrast, the Canadian act limits enforcement of foreign country orders to those issued by courts. The Committee has decided that only orders issued by courts in Canada should be enforced. This actually may be a moot point, because our understanding is that only courts are involved in issuing domestic violence protective orders in Canada.

All Parts of the Order or Only No-Contact Provisions?

The Conference's domestic act recognizes all parts of the protection order from another state, even parts that the enforcing state could not have ordered. Significantly, the IEDVPOA enforces the custody provisions of the sister state orders. The draft follows the narrower approach of the Canadian act and recognizes only no-contact provisions. In this major departure from the IEDVPOA, this draft defines "Canadian civil protection order" in the same manner as the ECJDA defines "foreign civil protection order." By using this definition, the act recognizes only those parts of Canadian civil protection orders that deal with no-contact. This draft leaves international custody issues to other bodies of law and provides more limited recognition and enforcement of Canadian civil protection orders.

Summary

In sum, the draft before you implements the resolution of these issues in an act that relies heavily on the IEDVPOA. It departs from the IEDVPOA in several important respects. First, the definition of a Canadian domestic violence protection order is much narrower than definitions in the IEDVPOA, implementing the committee's decision to recognize only the no-contact provisions of Canadian protection orders.¹

Persons familiar with the IEDVPOA will notice also that this act reverses the order of the Judicial and Nonjudicial enforcement sections. A substantive reason supports the reversal. This act, like the Canadian act, has the limited purpose of addressing the emergency presented by the threat of violence from a person who has been ordered to stay away from the complaining party. With this goal, it made sense to give direction first to the law enforcement officers, the persons who will be the primary enforcers of the act.

Also, persons familiar with the IEDVPOA will recognize provisions that encourage law enforcement to accept a facially valid order as probable cause that a valid Canadian protection order exists. Like the IEDVPOA, the act dispenses with the need for registration, but has several provisions addressing the optional registration process.

¹ The four subsections of the definition of Canadian domestic violence protection order draw from the Canadian act (the ECJDA) for much of the limiting language.

Changes Since the First Reading of the Act in 2014

Because of the generally favorable reception last year in Seattle, the Committee has made relatively few changes, other than those suggested by the Style Committee. These changes can be summarized as follows:

- some re-organization to emphasize the focus on emergency enforcement by law enforcement as the central purpose of the Act
- re-wording of some of the definitions to clarify it is only Canadian civil orders relating to domestic violence that the Act seeks to enforce
- explanations in the comments that clarify that despite the "no-contact" thrust, the act intends to cover contact with persons and property other than the protected individual if the respondent is trying to intimidate the protected individual by contact with these third parties or property
- addition of language clarifying that law enforcement officials should take the safety of the protected individual into account when giving notice to the respondent
- expansion of the registration option, which remains optional under the act