

Civil Restraining Order Application Processing in the British Columbia Provincial
Court: An Institutional Ethnography

by

Jill Louise Adams
B.A., University of Victoria, 2002

A Thesis Submitted in Partial Fulfillment of the
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MASTER OF ARTS

in the Department of Sociology

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ABSTRACT

Although the civil restraining order is the most commonly sought legal initiative to combat intimate partner violence in British Columbia, no known qualitative research has assessed the application process or the enforcement of the orders in BC. Previous quantitative research presents mixed findings and fails to provide an in-depth analysis of how legal and institutional work is organized, and in turn, organizes the process. This thesis employs Dorothy Smith's institutional ethnography to critically examine civil restraining order application processing in the BC Provincial Court. A combination of interviews, observations, and textual analyses contribute to the mapping of the way formalized texts regulate the different phases of practitioner's work. Particular attention is paid to disjunctures between battered women's experiential knowledge and what becomes formally known to practitioners who manage her case. This research found that abused women's lived experience with violence is transformed and shaped into accounts in which her safety needs disappear. Court practitioners become immersed in text-mediated activity within a legal ruling apparatus that emphasizes timely completion of a large quantity of cases, with little or no commitment to quality solutions. In the same effort to preserve limited police time and resources, one policy directs judges to add a police enforcement clause to only a few of the most serious cases. All restraining orders that do *not* have this clause are currently unenforceable.

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Chapter 1: Introduction and Methods

I. Introduction

Despite the growing public awareness and new priority-driven initiatives promised by provincial and federal governments to take action against domestic violence,¹ the 2004 General Social Survey revealed that spousal violence rates have not decreased since 1999 (Statistics Canada 2005). Each year, over two and a half million women in Canada report abuse by a current or past marital or common law partner (Statistics Canada 2001). Specifically in British Columbia, thirty-six percent of women reported at least one intimate partner assault since the age of 16 (Klymchuk 2000). Maintaining these elevated percentages, BC holds the highest rate of spousal violence among the Canadian Provinces (Morrow et al. 2004; Statistics Canada 2001).

The restraining order, or more broadly, the protection order, remains the most commonly sought legal action for females trying to combat male violence in British Columbia. A restraining order may be obtained through the civil Provincial Court (called the *civil restraining order*), or through the criminal Provincial Court (called a *peace bond or 810 recognizance order*). These two types of protection orders follow different legal procedures, and fall under different legislation.

Peace Bond applications often follow a violent event to which police respond, especially male-to-male violence, assault by a stranger, and among individuals who do not have shared children or a familial connection.² Attending officers are

¹Ministry of Community Services Stopping the Violence Program, 2004; Violence Against Women in Relationships Policy, 1993, updated in 1999; Criminal Code amendments to include stalking, 1993; Ministry of Attorney General Wife Assault Policy, 1989; Health Canada's Family Violence Initiative, 1988.

²A familial connection includes individuals who are/were related by way of marriage, common-law, have shared children, or consider themselves in some way connected as a family unit.

encouraged where there is sufficient evidence³ to place assault charges and/or initiate the application process for a Peace Bond. Alternatively, applicants wishing to press criminal charges against an abuser initiate the process at the *criminal* section of the Provincial Court Registry.

Civil restraining orders fall under the Family Relations Act, and are most often issued to victims of family violence who do not wish to press criminal charges. The process is guided by court staff, and/or a lawyer, and follows civil legal procedures. Since in many cases, victims of abuse by intimate partners are reluctant to press criminal charges, and court practitioners encourage those with a past or present familial relationship to follow the civil course, most domestic violence cases in BC proceed through the civil court.

Even though the majority of domestic violence victims apply to obtain restraining orders through the *civil* court (PVS, 2005), Canadian research has neglected civil restraining orders. No known qualitative studies have focused on either application processing or the final enforcement of civil restraining orders in BC.⁴ Therefore, for local reflection and assessment, researchers in BC and Canada have had to rely on qualitative research conducted in other parts of the world, or quantitative data.

According to the most recent Canadian General Social Survey, "about one third (32%), of spousal violence victims who reported to the police also had a restraining order or protection order against their abuser" (Statistics Canada 2005). In 1992, seven out of the twenty-eight women killed by their partners or ex-partners in Massachusetts had restraining orders against these men. Five of these orders were still in effect at the time of death (Battered Women Fighting Back, cited in

³ Evidence is determined as sufficient by each officer's own discretion during on-site investigation. For more about criminal protection orders in BC, see Rigakos, George (1997).

⁴For quantitative research on final enforcement of restraining orders in BC, see Rigakos, George (1995, 1997).

Ptacek 1995).⁵ In other words, the restraining order does not seem to be offering protection from violence in a substantial number of cases in Canada and the US.

Studies on restraining order efficacy in other parts of the world present mixed findings, depending on how researchers measure 'effectiveness.' Some infer that restraining orders are effective if there has been no recidivism following their issuance (Carlson et al. 1999; Harrell and Smith 1996; Klein 1996; Sherman et al. 1992), and others equate effectiveness with a *reduction* in violence (Grau et al. 1985). A number of researchers compile victims' own evaluations of 'safety' (Johnson et al. 2003; Harrell and Smith 1996; Fischer and Rose 1995), and still others assume victims are safe following successful prosecution of batterers (Berk et al. 1980).

Previous quantitative research demonstrates that restraining orders are effective for some but not for all, at some times but not at others, and in some regions, but not in others (Davis and Smith 1995). The questions of how and why restraining orders fail are left unanswered, since studies uncovering these statistics have been focused on a final assessment, and not on the process. Lewis et al (2000) point out that too many researchers thus far, have left out subjective experience and consideration of the *process* of obtaining a restraining order.

What is striking about much commentary and research concerning legal responses to domestic violence is the absence of the main actors' voices...the lived experience of violence...Writers in this tradition fail to consider *any* aspects of the process as potentially positive and instead condemn the entire process, because the final assessment is judged to be negative (183).

A general lack of focus on the application process, and contradictions in previous research about restraining order effectiveness, led to the following central research questions for this thesis: What are the institutional conditions for the variability of outcomes for women seeking protection orders against abusers? More

⁵Since the publication of this statistic, *Battered Women Fighting Back* has been renamed *Peace at Home*.

specifically, how is the work⁶ of the applicant and of the institutional practitioners coordinated in the application process, and what outcomes do these concerted efforts produce for applicants?

Some of the same institutional case management problems with restraining orders have been identified in Australia (Strubbs and Powell 1989), England (Edwards 1989), and the United States (Pence 2001, 1997; Harrell and Smith 1996; Gondolf et al. 1994; Adhikari et al. 1993). Institutional problems identified in the United States include: fragmentation in the system, slow case processing, overemphasis on single incidents rather than overall violence, the placement of victims in adversarial positions, and texts (regulations, forms, procedures and reports) that do not direct practitioners to give priority to victim safety (Pence and McDonnell 2000). For this research, I primarily focus on the last of these: the safety considerations and work coordinated by restraining order application forms used in the BC Provincial Court. Dorothy Smith's (1999; 1990a) institutional ethnography was chosen as the most suitable method of inquiry for this thesis.

II. Methods

Traditional, taken for granted social science research methods operate within masculine boundaries of ruling relations, thus serving the needs of the ruling rather than those who are most significantly affected by this suppression (Smith 1999). While women's participation as active agents in social events has increased over time, residue of this lack of opportunity remains, since we are still operating under ruling conditions that were formulated by white, middle-class men. In light of this

⁶ "Work" in this context expands on Marx's original materialist notion of labour. Here, an applicant or practitioner's work includes all physical, intellectual and emotional activities s/he is involved in that contribute to application processing. For example, an applicant's bus ride to the courthouse is 'work.' For more on Smith's (1986) "generous concept of work," see Campbell & Gregor, (2002).

problem, I required a method of inquiry that was not immediately restricted by gendered discourse with determined boundaries and knowledge. I required one that could be attentive to the way discourses continually insert their ordering capacities into the social, so that diverse subjective perspectives are preserved and not simply collapsed.

Most research intended to evaluate government programs is quantitative, takes place within government and "is set out by institution managers where social research is meant to serve and answer questions posed by policymakers" (Loseke 1989:202). When policy-makers with an agenda direct research, questions are primarily those of fiscal accountability, "and the more sociological question - how does this program work? - is relegated to the fringes of inquiry" (Ibid:203). Quantitative research that strives for objectivity, universal abstractions, and neutrality, consistently excludes women's experiences and distorts narratives because the language of neutrality itself is one of the devices for this silencing (Finley cited in Balos, 1994:117). Unique embodied perspectives are seen as biases to quantitative research as "[h]aving no experience or prior knowledge of something is equated with perfect neutrality" (Ibid).

To assume research or experiences within the legal system are neutral and autonomous, however, is to detach them from the human relations that maintain and reproduce structural and ideological patriarchy through everyday decision-making. The legal and criminal justice system's value-neutral model in treating all individuals 'equally,' gives the illusion that discrimination does not exist. In reality, this system has much difficulty in accommodating real people's lived experience with violence since policy and procedure are based on an "abstract, undifferentiated individual (who is not understood as gendered, racialized or classed)..." (McMahon

and Pence 2003:52). To provide the most accurate account, this research relied on epistemologies that are perspectival, situated and discursive.

Institutional Ethnography

Violence against women does not occur in a separate, observable, empirical world 'out there.' (Yllo 1988:42). It is for this reason that my inquiry necessarily has taken the standpoint of those being ruled, beginning with lived experience where consciousness is embodied (Smith 2001b), and where isolation from relations with others is neither achievable, nor sought by the sociologist. Rather than exclusively exploring one subject's experiences, who may not comprehend the extent ruling discourses organize her life, it was important to consider the ways in which multiple realities are hooked up. Just as it does not make sense to study the conditions of a single tree to comprehend its role and function in an ecosystem, it did not make sense here to study the perspectives and experience of a single individual lifted out of the dynamic interchanging of ideas, work activities, and feelings shared between individuals. It is the assemblage of the situated events that gives rise to an understanding of the trans-local, where local sites are hooked into sequences of action coordinating subjects and their activities in other local sites (Smith 1999). Institutional ethnography allowed me to delve into the ways entities are internally related, and discover what aspects of the institutional processing of a victim's application helps and hinders her ability to achieve freedom from male violence.

This dialectic method was used to explore the process of obtaining a civil restraining order in BC, starting with practitioners' and applicants' experience. From their various positions in the process, these subjects are experts in the local practices of their material lives. They have both theoretical and ontological

importance in making sense of ruling relations that are not fully knowable, or understandable from any one position in the process. The knowledge of each involved practitioner has been essential to my in depth understanding of the way experiential accounts of applicants are transformed into 'cases,' granted or denied a protection order, entered into a provincial database, and then made available for future activation, or police enforcement.

In mapping out the sequence of action of the restraining order application, I have been able to explore the "local actualities of [applicant's] everyday/everynight world as they are organized extra-locally, abstracted, grounded in universalized forms, and objectified" (Smith 1990b:6). Through textual analysis, interviews and observations, I have identified particular points in the restraining order application process that both ensure and compromise safety. Importantly, the difference between myself as a researcher watching and learning about the process, and practitioners working inside it, is not principally a difference between level of knowledge about male violence, devotion to specific causes, or different social or political philosophies; rather, our difference lies in where we are located as knowers (Peacock and Pence 2002). Unstructured and semi-structured interviews involved applicants and practitioners situated in each processing interchange.⁷

Four courtroom observations were conducted to gain an understanding of the legal processes and how institutional work is put together in the courtroom setting. Specifically, eight restraining order hearings were observed, in front of four different judges, two male and two female. Throughout observations, informal discussions took place with two court clerks and a family clerk. As distinct from

⁷ Processing interchange refers to the sequence of documentary practices or, "organizational occasions of action in which one practitioner receives from another a document pertaining to a case," (Pence, 2001) and then does something further with the document. Most of the ideological work of institutions is accomplished through document exchanges involving a highly specialized division of labour,

formal interviews, these conversations may be better described as simply "talking to people" (DeVault and McCoy 2001). Talking to people was not necessarily restricted to one-on-one conversation; it sometimes engaged a group.

This open format supports a reflexive process whereby informants and the interviewer co-construct knowledge, which is much more successful in getting at the real work processes than through structured interview protocol. As Eric Mykhalovskiy explains, "...analytic thinking begins in the interview. It is like an analytic rehearsal. I'm checking my understanding as it develops; I offer it up to the informant for confirmation or correction" (DeVault and McCoy 2001:757). To achieve an accurate account of *how things work*, my diagrams were co-constructed through reflexive talk with involved practitioners who clearly know and understand their specialized role in the process. Their involvement in diagramming verified a successful technique of piecing together who does what, and how their actions are coordinated across multiple sites.

My investigation intended to discover the coordinated actions of professionals located within the relevancies and frameworks of the apparatus, that work to design, add to, translate, and activate the retraining order application (Smith 1990b). I paid particular attention to disjunctures between women's experiential knowledge and what becomes formally known to practitioners who will manage her 'case.' In other words, finding gaps existing between what is inscribed on paper and her real life experiences, and learning if these lines of fault are consequential in obtaining the kind of protection she needs. Gaps between institutional versions of reality and women's experienced reality are potentially produced at each processing interchange of each case (Pence and McMahon 2003); therefore, attention to every step is critical. Since at every stage "[e]ach discourse has its own distinctive set of rules or procedures that govern the production of

what is to count as a meaningful or truthful statement" (Flax 1992:452), finding women's lived experience under such highly organized power is challenging.

The Importance of Texts

The need to examine the text(s) involved in this application process was based on the premise that it is text-based forms of knowledge and discursive practices that largely mediate, regulate, and organize practitioners' work in large-scale institutional settings. Obtaining a restraining order in BC is no exception; it is highly mediated by texts that individuals read and activate at various stages, transforming applicants' narratives to fit legal categories and requirements. This thesis traces the sequences of action that contribute to the processing of the *Application to Obtain a Restraining Order*. This application, and the two other accompanying forms, (the *Affidavit* and *Ex Parte Family Application*), were a central anchor in the effort to map out the lived experiences of those involved in the creating, processing, interpreting, and living with the outcomes of the restraining order.

Since the restraining order application forms - both computerized and on paper - represent what people do, I used these forms as a starting point in my study to discover "what actually happens" (Smith 1990b). The application is a case file that 'stands in' for the real person it represents, thus, it is a crucial piece in understanding how it mediates what happens. The text itself is not the primary object of investigation; rather it is what people do with the text, and how it enters into the regulation of their activities that is important to the ethnographer.

The text necessarily has a fixed and replicable quality, where applications can be stored, copied, reproduced, and activated by practitioners at different times. This standardizing iterative capacity of the text allows it to be activated by the next

recipient beyond its particular local setting. In other words, the text loses its temporal specificity as it is detached from its local context and specific circumstances within which it was produced. These specific circumstances, however, must remain central to inquiry - the notion of standpoint grounds the researcher in the relevancies of the particular group - in this case, restraining order applicants.

The *Application to Obtain a Restraining Order*, like other texts used in institutions to mediate activity, contains largely unnoticed, unwritten instructions restricting what can be done through its processing. The exploration of "how texts mediate, regulate, and authorize people's activities expands the scope of ethnographic method beyond the limits of observation" (Smith 2001b:159). This is because much institutional organizational activity carried out routinely by practitioners is taken for granted, and unquestioned. Importantly, while this research has uncovered problematic points in the application process where applicant's safety is not centralized, and even ignored, this research is not a critique of individual practitioner's work.

III. Organization & Research Limitations

Thesis Organization

This ethnography traces the civil restraining order through all phases of the application process. This chapter introduces the research, methods used, and thesis organization. It also contains information about participants of the study, and identifies research limitations. Chapter 2 provides a review of relevant literature beginning with conceptualizing domestic violence, followed by evaluative accounts of various institutional responses used in the past and present. This section also

identifies cleavages in current literature about how best to respond to this particular form of violence while taking into consideration women's coping mechanisms, agency, and the perspectives and experience of marginalized groups. A review of literature that specifically pertains to the restraining order immediately follows current debates about whether or not to use the justice system at all in response to domestic violence.

Chapter 3, an introduction to the results, begins with a general overview of the restraining order application process illustrated in *Diagram 1*. Each subsequent chapter in the thesis focuses on a portion of this more thorough diagram. As the thesis follows a sequential format, the diagram segments are included in the beginning of each chapter, temporarily drawing a detailed focus to each piece. A list of research participant pseudonyms is included in chapter 3, followed by a contextual section containing applicants' lived experience. The second main section of the chapter contains copies of, and description of the three application forms.

In Chapter 4, the ethnography moves into the actions that surround filling out the application forms. This chapter begins with an analysis of how experiential accounts are extracted and fit into predetermined categories on the application forms. The forms become reified into a case, which will 'stand in' for a woman's lived experience throughout her case assessment. The transformation of what is happening in her life into a textual description on the application is one of the most important prerequisites in obtaining a restraining order, or more broadly, achieving safety and justice through the courts. A system "that can produce an institutional version of a case that most closely reflects what actually happened and is happening is one that stands the best chance of fulfilling the promise of...justice, fairness, and protection" (Pence and McMahon 2003:144). How an applicant fills out the forms,

what she needs to know to fill out the form, and who else is involved in this coordinated effort are explicated in this portion of the analysis.

Submission of completed application forms back to the Family Court Registry is taken up in Chapter 5. At this point, a series of institutional processes take place over which applicants have little control. This chapter draws from concrete description of how inscribed accounts on the application fit into broader legal discourses and how they are made actionable by court service workers, as the file changes hands several times. Once the application reaches the judge, the judge decides whether or not the application will be heard⁸ without first giving notice to the other party. Description of this application hearing, serving notice to the other party, and hearing from the other party are included in this chapter.

Analysis in chapter 6 is located mainly in the courthouse, beginning with courtroom preparation and the coordinated work of court practitioners on *Family Remand Day*. While court is in session, practitioners manage cases by prioritizing, sorting and responding to special requests and circumstances that affect which cases they call and in which order. Applicants' experiential accounts of facing their abusers in court, and recounting their personal stories in front of the judge are included here.

Chapter 7 takes the reader through the processes that ensue upon the granting of a restraining order. When an order is granted, the judge decides on the specific conditions the order is to contain, and the file is passed from judge to court clerk to family clerk. The family clerk drafts the order and faxes it to the Protection Order Registry (POR). The POR is a central registry containing all civil and criminal court orders issued in BC. It was designed to assist officers in enforcement. The

⁸ To 'hear' an application, means the judge will address it by arranging a short hearing or trial to hear the applicant's concerns.

closing section accounts the process of subsequent hearings to amend existing orders.

Police response and enforcement of the final restraining order is explicated in Chapter 8, drawing attention to how specific conditions on the order govern response. A major finding revealed that police are not responding to civil restraining order breeches because the orders do not fall under *criminal* jurisdiction. Enforcement of the orders is legally restricted, civil cases are not taken seriously, and police are not accessing the provincial database that has been primarily set up for ease in responding to civil cases (the POR). Chapter 9 provides a summary and analysis of key findings, and recommendations for the civil justice response in BC based on the findings.

Resort to some legal language throughout the thesis was necessary to provide an accurate account. Key terms are defined either in the text, or as a footnote, and a more exhaustive glossary of terms is provided in Appendix B. Both applicants I interviewed are women who were victimized by their male ex-partners. It is for this reason, and because most civil restraining order applicants are women, that I use the pronoun 'she' when referring to applicants, and 'he' when referring to respondents.

Participant Selection

In selecting my informants, preliminary groundwork such as reading online manuals, looking over government websites, consulting booklets, and phoning general inquiry lines allowed me to discern the key individuals involved in the restraining order application process. As a formal sampling method was not appropriate for this institutional ethnography, I recruited many of my informants as they became relevant to my analysis. For a complete list of participant pseudonyms

and their respective job titles, see *List of Research Participants and Pseudonym Key* in Chapter 3.

Research Limitations

Since many practitioners complete their daily routines without questioning what they are doing, I faced the challenge during interviews of keeping conversation focused on concrete descriptions of work. Workers' tasks often evolve as "natural, as the way things are done and - in some odd way - as the only way they could be done, rather than as planned procedures and rules developed by individuals ensuring certain ideological ways of interpreting and acting on a case" (Pence 1997:60). For this reason, it is essential that conversation remain centered on concrete activities, and it was my job to identify when informants began talking about their work as abstract policy in institutional discourse.

Talking with informants who are higher up in professional status posed a greater challenge, since they operate inside the institutional framework, and have been taught a professional discourse to describe internal operations. It was my objective to continually reflect on the tendency for such conversation to move from the concrete to the ideological. This is important because institutional language contains obscured activity, no subject, and no real social relations. For example, "when someone says, 'I processed that application,' or 'I manage the household finances,' the actualities of the work are missing" (Campbell and Gregor 2002:72). I believe I was able to elicit descriptive accounts by requesting from the participants a list of the steps taken, or specific examples to return the focus to the actual, and away from the taken for granted 'typical.'

A challenge some institutional ethnographers have encountered while interviewing practitioners about the work they do is that informants overlook

certain aspects of their work that to them do not seem worth reporting. Since much of the work practitioners do is routine, and not usually questioned, some of these details can go unreported. I tried a particular method of interviewing with one informant that proved considerably effective in preventing respondent oversight during interviews. I asked a clerk to pretend she was training me as a new employee for her job and urged her to describe details I would need to know to do the job. Perhaps since most employees at some point have been in a position of having to train someone, even if at another job, it is a more natural way for them to include details. Rather than reporting that they simply 'fax off the finished application,' new employees need to know exactly what steps to take.

For example, I asked questions like, 'what if I forgot to tell the family clerk where the applicant was waiting and she couldn't find her?' This sidestepped reports such as: "the clerk finds the applicant waiting outside." The latter response takes for granted that the applicant is found. (i.e; sometimes waiting applicants cannot be found easily because the physical description of the applicant is passed along through several people who match the articulated description to real person waiting). Sometimes this step causes confusion - so it is not really that they 'just find them'. The clerk I interviewed provided descriptive instruction like, "you have to make sure the faxed application goes into the bin on the left, or someone might think it hasn't been done yet. If it goes into the wrong bin, it could get lost." This kind of role-play helped keep the language specific and actual and the element of humour in my trial actually made things more casual and productive.

I have limited my study to one courthouse in a British Columbian city. I am aware that there are differences in application processing and courthouse procedures across BC, including variation between rural and urban locations. However, in order to maintain an appropriate focus, and to provide an in-depth

analysis of application processing, it was beyond this project's scope to also reflect on jurisdictional differences.

The civil restraining order falls under the Family Relations Act (FRA). Often restraining orders accompany applications for custody, access, guardianship and/or maintenance. In such cases, it was not appropriate, or possible, to explore the restraining order portion of the application in isolation from the other components. All of these issues are heard by the judge at the same time and contribute as a whole to her 'case' or story. There are also several other acts or sections within the Family Relations Act, such as Reciprocal Enforcement of Maintenance Order (REMO) legislation, Child, Family and Community Service Act (CFCSA) legislation, the Family Maintenance and Enforcement Act (FMEA), the Inter-jurisdictional Support Orders Act (ISO), and the Divorce Act that I did not explore in depth. Occasionally, a restraining order application becomes involved with other Acts, and separating them from these other governing discourses did not make sense since they too shaped segments of her larger case. It is beyond the scope of this thesis to discuss these Acts where they are not directly involved in a restraining order application. My level of analysis does not include the textual study of legislative Acts; rather, I explore how case processing is informed and mediated by the legislation already written and enacted.

Other research limitations include those common to other qualitative research. As a lone researcher, interpretations and themes drawn from informants' responses are my own, which may vary from what other researchers would observe. Qualitative research can be more labour intensive due to its usual intention to obtain detail (Murphy & O'Leary, cited in Goldman and Du Mont 2001); this can be seen as either a limitation, or as I viewed it, an opportunity to delve deeply into applicant's direct experience with the process.

Chapter 2: Review of the Literature

I. Conceptualizing Domestic Violence

Terms and Definitions

Appropriate conceptualization of domestic violence begins with the language and definition advocates, researchers, and practitioners choose to describe it. This is because the language used to refer to violence directly shapes response, affects public opinion and support, directs research, evokes new policy and programs, and influences interaction with survivors. Terms have changed over time to reflect evolving understandings and new priorities raised in the literature. 'Family violence,' 'spousal abuse' and 'domestic violence' are the terms most favored by policy makers because they are all encompassing - including married and cohabiting couples, heterosexual and same sex couples, and even violence between siblings (Mooney 2000).

While inclusive, these terms have been criticized for their generality, failing to identify the specific relationships involved (Dobash et al. 1998). In other words, the terms are "gender blind," since they can be used to describe female violence against men as much as male violence against women. In choosing degendered language such as 'domestic violence,' 'spousal abuse,' or 'intimate partner violence,' we ignore evidence suggesting that men are the primary perpetrators of abuse (Statistics Canada 2005; Dobash and Dobash 2000; 1992; House 1999; DeKeseredy and Hinch 1991). To more adequately embody the gendered nature of domestic violence, some feminists introduced the terms 'wife abuse,' or 'violence against wives.'

The British Columbia Ministry of Attorney General responded to pressures to address the gendered nature of the problem by introducing the *Wife Assault Policy* in 1984. However, since the phrase 'wife assault' refers only to married couples, some argued that the term's specificity compromises the inclusion of dating couples, cohabiting, separated, divorced, or same sex couples. The pressure to adopt a more inclusive term brought about the re-naming of the Wife Assault Policy in 1993 to the *Violence Against Women In Relationships (VAWIR)* policy, "in which the meaning of 'relationship' was expanded to include not only married and common-law relationships but dating and same-sex relationships as well" (Kachuk 1998:1).

Other terms that both embody the gendered nature of the violence, and are not reserved for married women include 'battered woman' or 'abused woman,' for example. Susan Schechter (1982) pointed out that several women she worked with expressed aversion to the term 'battered woman' because they felt the words do not capture the complexity of their experience. The phrase defines a woman exclusively in terms of her battering, emphasizing her problem as opposed to the problem of male violence and coercive power. The term 'battered woman' has been associated with the concept of *battered woman syndrome*, with its implications of a helpless, defeated victim, rather than of a survivor and resistor (Schneider 2000).

Despite the shortcomings with each discussed term, the phrase 'battered women', or -probably more preferred- 'violence against women' are widely used because they balance inclusiveness and specificity better than others do. The BC Attorney General uses the phrase, 'violence against women in relationships,' while the BC criminal court system, refers to this type of violence as 'spousal assault.' The BC civil justice system uses the umbrella term, 'family matter' because custody, guardianship, access, and maintenance issues are resolved at the same time and

through the same process as family violence issues are. The term 'family matter' is highly problematic when civil cases involve restraining orders, because the term fails to separate violence from other less threatening matters, fails to make visible that there is violence in some of these relationships, and fails to address the gendered nature of such violence. Throughout this thesis, I use the terms 'battered woman' (and batterer), 'abused woman,' (and abuser) and 'male violence' as preferred over other less descriptive, gender blind terms.

Aside from selecting appropriate terms used to refer to violence, determining what constitutes or counts as violence has also provoked debate in the literature. Calculated rates of violence vary with different measures researchers use, or how research participants define and report violence. Straus et al. (1995) define violence in their research as the intent to cause harm. Those who adopt this definition consider the intent more significant than the outcome, but fail to account for women intending to cause harm in self-defense.

Bograd (1988), and Gelles and Cornell (cited in Mooney 2000) define violence exclusively in terms of the use of physical force. Use of a definition that only includes physical violence insinuates that physical violence is worse than psychological abuse, or 'economic brutality' (DeKeseredy and MacLean 1990), which are not measured. Women interviewed for Walker's study (1979) reported that prolonged verbal humiliation was often a worse experience than physical violence. Mooney (2000) also sought abused women's own perceptions of what counts as violence and found that 92% classified physical violence leading to injury as domestic violence, but 80% also categorized mental cruelty as domestic violence. Reflecting on these accounts, it seems inadequate to settle for a definition that excludes what many battered women describe as a major element of their experience: mental cruelty.

Whether a "definition of violence is broad and more inclusive, or more narrow and differentiated dictates very different starting points for researchers" (Dobash et al. 1998:4). Das Dasgupta (2001) warns that a 'narrow' definition, such as one that is incident-based leads to a de-contextualized view that would result in erroneous empirical data. For example, in the Family Violence in Canada Survey (1999) where violence was measured by isolated acts, 12% of women reported at least one violent incident by a marital partner during a one-year period, which was four times the previous national average (Fitzgerald 1999). It is important to distinguish between single violent events and ongoing cycles of coercion and control by measuring violence in context. Notably, women who endure ongoing, patterned violence, experience more than one incident (Wife Assault National Survey cited in Rodgers 1994); therefore, counting single acts of violence is not the most efficient measure of patterned domestic abuse.

Domestic violence needs to be conceptualized as a *pattern* of physical abuse, coercion, intimidation, economic control, and other means used by a person to establish or maintain power and control over his or her partner (Frederick 2000; DAIP and Praxis International, 1999; Avalon 1999; House 1999; Shepard and Pence 1999b; Stark 1996). In recognizing that violence experienced by many women in relationships is cyclical and patterned, we are better able to understand choices women make about their safety, and how to better tailor institutional response to accommodate for this form of violence. This is the definition used in this thesis to conceptualize violence against women by male partners, including dating, separated, divorced, married, or common-law couples. This conceptualization is to be distinguished from other forms of interpersonal violence, which carry different intentions and consequences.

The Gendered Nature of Violence

Some quantitative researchers contend that women are just as likely as men to act violently against their partners (Gelles 1997; Straus 1993; Steinmetz 1977; 1978 cited in DeKeseredy and Hinch 1991). Other researchers have criticized the "sex symmetry perspective," or declaration of parity between husbands and wives on several grounds. Berns (2001) claims that ignoring evidence that reveals the directional nature of intimate violence (most commonly male violence against women), is a frequent strategy used by researchers and professionals to de-gender the problem. Kersti Yllo (1988) and Lise Gotell (1998) point out that a general problem with research based on this perspective is that counting violent incidents on a severity scale constructed by the researcher compromises a contextual and in-depth understanding needed for accurately conceptualizing the problem.

Dobash and Dobash, (1992) also contested Straus and Gelles' "reliance on a seriously flawed data collection instrument" (276), expressing skepticism about the ability of a survey instrument to collect meaningful data about violence against women. They claim that the specific index used by Straus and Gelles (*Conflict Tactics Scale*) was poorly conceived, containing researcher's assumptions about degree of risk for each act, and non-mutually exclusive categories of violence (Dobash and Dobash 1988). Further, the scale is unable to account for self-defense and the extent of injuries (Berns 2001). Dobash and Dobash (1998) also found that men tend to underestimate and thus under-report their own use of violence and its consequences, whereas women tend to overestimate and over-report their use of violence (or self defense) and its consequences. In other words, differences in perceptions about personal use of violence do not seem to accurately reflect *actual* uses of violence. A major consequence of ignoring empirical evidence that domestic violence is gendered, and of using gender-neutral language, is that the burden and

responsibility is shifted away from men and the underlying cultural or structural factors that foster and encourage the use of male violence.

Depoliticizing language also conceals the fact that women and men *experience* violent acts differently. Mooney (2000) found that in situations of mutual domestic violence, women were more likely than men to undergo a wide range of abuse, suffer greater injuries, and endure assault with a weapon. Most men are bigger and stronger than most women, and can potentially cause more physical damage. The impact on women was reportedly worse; many had to stay in the hospital overnight, take time off work, and about half reported feelings of worry, anxiety, depression, and loss of self-confidence. These physical and emotional consequences act as barriers for abused women to successfully advance her growth as an individual, reach her career or educational goals, and assist her children to do so. Due to these radiating impacts and its prevalence, male violence against women must be considered a societal problem, and not simply a problem of select individuals.

The majority of recent literature concurs that violence against women is a systemic problem, rather than an individual one, directly correlated with the oppression of women (Gotell 1998; Faith and Currie 1993). However, despite this empirical reality, "feminist claims regarding the structural and systemic nature of ...violence were filtered through a discourse emphasizing criminal responsibility and retribution" (Gotell 1998:52). Under the guise of solving the problem of male violence, institutional response shifted to prosecuting individual batterers, and away from broader structural reform.

II. Institutional Response to Violence against Women

Mandatory Arrest and No drop prosecution policies

Mandatory arrest eliminated case-by-case discretion by "requiring an officer to arrest a suspect if there is probable cause to believe that an assault or battery has occurred, regardless of the victim's consent or objection" (Mills 2003:558). The mandatory arrest approach initially satisfied feminists who encouraged the consistent application of the law that would treat domestic violence as seriously as an assault by a stranger. As Currie (1993) affirmed, "...feminism is not responsible for the current form of male justice, it only asks for it to be applied consistently, against men" (46). Consistent application across all interpersonal violent encounters was expected to deliver the message that violence in the home is *also* unacceptable, and will not be tolerated.

The effectiveness of mandatory arrest still lacks consensus in current literature. Supporters of mandatory intervention argue that it promotes empowerment because battered women are not placed in the decision-making position to arrest their spouse, so they avoid blame, coercion or retaliation from the abuser (Brown 2000; Davis and Smith 1995). Those opposed to mandatory intervention argue that it impedes empowerment because social interests override individual women's needs (McGillivray cited in Currie 1993). Following implementation of mandatory charging in London, Ontario, Peter Jaffe found that victim satisfaction with police response increased from 48% to 65%, between 1979-1990, and 87% of the victims reported they would call the police again (Brown 2000). Mandatory arrest gained much support following Sherman and Berk's (1984) US study of the relationship between police intervention and recidivism. Sherman and Schmidt's more recent research (1996) revealed mandatory arrest may help certain

victims, but not others, depending on race, employment status, and city of residence.

A natural extension of the mandatory arrest policy was the no-drop prosecution policy where once a criminal investigation begins, abused women are not allowed to drop the charges pending. Similarly, victim's objections and preferences are negated, and prosecutions are required when there is sufficient evidence. The advantages of this policy are similar to those of mandatory arrest in that there is little incentive for the batterer to threaten and coerce the victim to drop the charges, since the women have little control over the outcome. It also upholds the societal value that it is not acceptable to break the law by abusing a loved one (Davis and Smith 1995). While these policies force police and prosecutors to act rather than trivialize or ignore women's complaints (Coker 2002), the potential for state interference and control over women's lives is increased. Some critics believe these policies can discourage battered women from seeking medical assistance (since women fear immediate arrest of their batterers), thereby compromising women's health and safety further (Mills 1999).

In Canada and in twenty-one of the US states, 'pro-arrest' or 'preferred arrest' policies have been implemented. These policies encourage officers to arrest whenever there is reasonable evidence that an assault occurred. The language of these policies is broad, vague, and simply encourages the arrest of at least one of the two parties (Holmes cited in Lane and Boba 2002). The vague language leaves much room for discretion and has led to an increase in the arrest of both parties (dual arrest) if both appear to be instigators, or if it is unclear who provoked the violence. As a result in the 1990's there was a marked increase in arrests of battered women who used a weapon in self-defense, reacted negatively toward officers, were accused by their batterer of starting it, appeared intoxicated, or

otherwise demonstrated characteristics that fit officers' frames of reference as the provoker of the conflict. In 1990, "as many as 35% of domestic violence arrests in Concord, New Hampshire were women, 23% in Vermont, 25% in Boulder County, Colorado" (Eng 2003:13), and 18% in Connecticut (Das DasGupta 2001). The inadequacy here is that "women who are not batterers are being arrested under laws originally designed for men who are" (McMahon and Pence 2003:63).

Advocates successfully lobbied jurisdictions in the US to attend to the problematic increase in dual arrest decisions by altering the pro-arrest legislation (Finn et al. 2004). For example, "primary aggressor" language was inserted into the Georgia State's Family Violence Act's *preferred arrest policy*, and the South Carolina *Code of Laws*, to encourage police to investigate who the instigator was, but "the statute is silent on what action to take if the officers are unable to make this determination" (Ibid:6). Officers continued to use their discretion and either did not follow the legislative changes (Buzawa et al. 1995; Blackwell & Vaughn, 2004 in Finn et al. 2004), or invoked the law selectively reflecting their own moral judgments (Oberweis and Musheno, cited in Finn et al. 2004). With little time for officers to investigate, it was often easier for officers to arrest both parties, and allow the prosecutor, and courts to determine culpability. Current British Columbia legislation contains direction that allows and encourages arrest where there is reasonable evidence, however, since officers know of the difficulty in having charges laid through the courts, they usually do not bother beginning the process (Ginn 2005).

Much of the legal system's response objective, as reflected in mandatory and 'no drop' policies, has focused on 'successful prosecution,' irrespective of the interests of the women seeking protection. A successful case is determined as such when there is ample evidence that leads to the conviction of the abuser. However,

as Barbara Hart (1996) points out, "battered women may be more concerned about preventing future violence than about vindicating the state's interest in penalizing the defendant for crimes previously committed" (101). Not all abused women seek relief through prosecution, and in some circumstances, "[w]hen a battered woman calls for assistance, the reason for the call is not necessarily that she wants to have the police involved or to have the police arrest the abuser" (Chiu 2001:1230). She may only require temporary separation from the abuser, medical assistance, or advice about shelters or divorce proceedings, for example.

Self Defense and The Battered Woman Syndrome

Legislative language prescribes a particular standard of legal self-defense that does not account for gender differences in the use of weapons. Overall strength and ability to cause physical damage is usually greater for men, but as the law is written, the person with a weapon, regardless of gender or intent, is to be considered by police as more aggressive and dangerous. What investigators do not often consider is that "women's use of violence in intimate relationships does not typically carry the same gendered cultural meaning of powerlessness, nor does it likely accomplish the same outcome of control" (Smart 1992:51).

Studies show that women who kill their spouses do so when their circumstances reach a desperate state in which they are likely to be killed themselves, and they have not been able to find assistance through any other means (Dobash and Dobash 2000). McCormick (cited in Saunders 1988) found that 40% of the women jailed for homicide had endured chronic physical abuse in their relationships, and this was reportedly the major cause for the murder. In homicide cases where self-defense does not hold much strength in court, an insanity or incapacity defense is routinely applied to 'excuse' behavior rather than justify it.

When battering is lifted outside of its structural context where social inequalities are linked to a larger systemic problem, people's perceptions naturally shift to individual pathologies that require individual solutions. Further, "an impaired mental state defense also shifts the focus back toward proving pathology in the women, and away from her *right* to be free from harm inflicted by another" (Browne 1987:176 emphasis in original). While all homicide cases should be treated seriously, the criminal justice system must examine battered woman-committed homicides in a context different from other homicides.

A primary focus on the individual victim led to the medicalization of the problem and the development of theories such as Lenore Walker's Battered Woman Syndrome. Walker's (1979) concepts of 'learned helplessness' and the 'cycle of violence' suggest that battered women become helpless, and perceive themselves as unable to end the ongoing abuse in their lives (Fernandez et al. 1997). These became popular explanations for women's 'deviant' behavior (i.e.; staying in an abusive relationship). Battered women were conceptualized as individuals in need of medical help, counseling, and protection by the state.

The Battered Woman Syndrome theory rests on a narrow classification of a victim. Focus on this restrictive classification "took attention away from the collective plight of battered women...the larger issue of structural inequality" (Rothenberg 2003:772), and underlying cultural or structural factors that encourage male violence. The syndrome holds a common set of symptoms that all battered women are deemed to share (Dutton 1996). This derived set of 'symptoms' was based on the victimization of white, middle-class, heterosexual women; it thus failed to embody experiences of women of color, immigrants, the disabled, lesbians, queer, and poor women (Rothenberg 2003). Women who did not fit into the 'good

victim' profile, or who fought back, were judged by prosecutors as contributors to the violence.

Expert testimony that frames a battered woman as mentally impaired has led courts to question whether or not she is fit enough to care for her children when determining custody and access. Battered women become caught in a quandary where they need to prove victimization while at the same time prove they are able to care for their children. Abused women "who do not leave their abusers are deemed to be jeopardizing the mental health of their children as they are willfully allowing the children to witness family violence" (Jaaber and Das DasGupta no date). This dilemma may cause women to change their testimony in order to ensure the safety of their children (Schneider 2000). A battered woman can be charged for child neglect, but ironically, Pence (2001) points out, judges who grant visitation rights to dangerous batterers are not charged with the failure to protect children from harm.

Many women love their partners, and/or are economically or socially dependent on them, thus leaving may not be the desired end for all of them. Court service providers who maintain the opinion that abused women should leave their batterers in all cases often become pre-occupied and frustrated when women drop charges, and overlook women's agency and courage required to initiate the process of obtaining legal assistance. Victim 'reluctance to cooperate' is depicted in some literature as a serious problem that stands in the way of the law and order agenda. As Tolman and Weisz complain, "[v]ictims who do not wish to cooperate can make successful prosecution difficult or impossible, especially in cases where there is little evidence of the assault" (Bennett 1999:762). The very phrase *reluctance to cooperate* effectively criminalizes the victim, because failure to cooperate with the legal system is in many circumstances a serious, punishable offense.

Framing battered women as victims in need of state protection enabled advocates to gain public sympathy for victims, and demanded immediate judicial attention. Prosecutors could presumably better understand the reasons 'why women stay' or 'why they do not leave' if the woman in question possessed the characteristics of the battered woman. However, the very asking of these questions places the burden on the victims rather than on the battering men. Moreover, a focus on women leaving trivializes their victimization and reflects a limited understanding of the density of the trauma, physical harm, and the social, economic, and psychological risks accompanied with leaving. As Mohoney puts it,

"emphasizing a particular form of agency - exit- renders invisible all the other active efforts that the woman may have made to protect herself and her children. If exit remains the focal point, we fail to examine a more important act of agency - staying - and the tremendous will, strength and determination that may accompany such a decision" (Schneider 2000:78).

When women reach a desperate state and they are denied control over the arrest outcome (as in mandatory arrest, no drop, or dual arrest policies), feelings of powerlessness and inability to control their destiny are reinforced. This leads to further questions still debated in current literature: Can some level of control empower abused women, or should public service workers and/or the criminal justice system intervene and override women's wishes? Are battered women able to make informed choices about their lives while under the control of their abusers?

Women as Agents: Using the legal system

When research is driven by a focus on outcome and is not grounded in the accounts of women and men, it is all too easy to see the law as a monolithic entity imposed upon passive recipients. What is lost in this view is the agency of individuals as they engage with the justice system. It does not allow consideration of how individuals might use the law, purposefully and actively, as a part of a strategic process of challenge and resistance (Lewis et al. 2000:184).

A prerequisite to devising the most appropriate response to male violence is a thorough understanding of women's agency and level of ability to make rational decisions. The dichotomous construction where women are framed as either agent or victim in previous research is at odds with empirical studies. Several studies suggest women employ multiple strategies to cope with abuse that include help-seeking, strategic resistance, and everyday negotiations (Strang and Braithwaite 2002). Some women in Fischer and Rose's study (1995) chose to involve the law as a legitimizing structure to communicate the message to their partners that abuse is not acceptable and they will not tolerate it. These women are capable agents who act rationally and strategically even under debilitating consequences of male violence (Chiu 2001). By provoking change in this way, they become further empowered by realizing they are persons with rights (Currie 1993).

In light of the privileged and powerful status the legal system holds in industrial societies, women can use the law as leverage to gain some control in their abusive relationship and interrupt the pattern of control and domination. A protection order "becomes a psychological as well as a legal victory, reflecting a determined woman rather than a weak, passive victim" (Fischer and Rose 1995:424). One woman who dropped her order of protection the day after obtaining it described this victorious feeling: "To me, I still have the order of protection, because that feeling of fighting back and speaking out, will never leave me. I still carry the order with me and, in my mind, it's still valid" (Ibid). The *threat* of prosecution, Ford (1991) explains, "may be more significant than actual prosecution in the strategy of managing conflict" (318). The narratives in Ford's study suggest that abused women are not helpless and incapable of completing the necessary steps, but rather, use the system to get what they need, and discontinue when they have finished gaining advantages from it. Therefore, our current measure of successful

intervention that focuses on the final outcome (prosecution) is misguided because the *process* of seeking help from the legal system itself can be empowering.

An important consideration beyond the scope of Ford's (1991) study is that the level of empowerment and difficulty in using the justice system varies for women. Seeking help from the legal system has offered higher degrees of ease and empowerment to white, middle-class women, and systemic evaluations are largely based on the experiences of this privileged group. These evaluations are inadequate considering almost one in five Canadians are immigrants (Augustine 2003), and people of color make up the majority of recent immigrants, constituting about 18% of BC's population, and 13% of Canada's population (Statistics Canada 2001).

Marginalized Groups

Silencing the experiences of the poor and of women of color from the mainstream understanding of violence against women can be considered a violent act in itself, and has already "...seriously compromised the transgressive and transformative potential of the antiviolence movement's potentially radical critique of various forms of social domination" (Richie 2001:1135). As with many other crimes, legal and state systems have disproportionately devastating consequences for people of color, the poor, immigrants, and those with disabilities (Coker 2000). For example, Bright (cited in Eng 2003) documented that "[a] person of color is more likely than a white person to be stopped by the police, to be abused by the police during that stop, to be arrested, to be denied bail, to be charged with a serious crime, to be convicted, and to receive a harsher sentence" (12).

Low-income women also experience violence differently due to their restricted access to resources and economic freedom. As Bell (2003) found in her research, poor women cycle in and out of relationships with their abusers, and this

is often linked with her cycling in and out of welfare and low wage work. The cycling reflects her ongoing strategy to cope with violence, childcare needs, paying bills, and maintaining employment income. Employed battered women's work performance is often impaired because of an inability to make it to work on time or at all (Shepard and Pence 1999b). An added consequence may result if the courts determine that short term employment, poor credit, and the frequent adjusting of childcare arrangements are threatening to a battered woman's children, she may lose custody on these grounds.

Older women have been experiencing domestic violence at increasing rates over the years, and are a population that before the 1990's only received minor attention (Vinton 2001). Some women with disabilities receive ongoing care from spouses that are able-bodied. "What the disabled in our society have most in common is not their specific physical or mental limitations, which may vary widely, but the fact that they must all deal with a larger non-disabled population that dictates the norms" (Groce 1994:204). These norms and expectations are built into the justice system. Like low-income women, women with disabilities in care-dependent arrangements have less freedom to leave abusive situations.

Indigenous women undergo unique experiences with domestic violence but are virtually absent from the literature. One study that examined 2250 articles on women and violence between 1986 and 1996 found only two that directly dealt with aboriginal women (McIvor and Nahanee 1998). Terror and mistrust as consequences of colonialism, and racism, present "specific socio-cultural and historical contexts in which violence is manifested in [Aboriginal] communities" (Ibid:65). Throughout British Columbia over the last few years, "all poverty and native law paralegals have been laid off, further diminishing access to justice by poor and Aboriginal women"

(Morrow et al. 2004:365). Reduced access for some women will undoubtedly exacerbate the already present difficulty in accessing court services.

Less is known about rural womens' experience with male violence than urban womens', although Neil Websdale's ethnography (1998) focused on this harder to reach population. He found that due to isolation, and "rural patriarchy," prescribed stereotypical gender roles make it more difficult for women to "resist battering, leave with their children, use the telephone to summon help, find support of other women, or get help from the criminal justice system or the state" (54).

Despite the existence of institutionalized oppression leading to diverse experience by race, class, age, ability or locality, battered women share common experiences as victims and survivors of abuse. They all "live in a tangled web of relationships bound by family and culture in which expectations of correct behavior for women and men differ substantially" (Hanmer and Itzin 2000:10). While it is important to recognize and account for difference, an effective response remains flexible while focusing on meeting similar needs.

III. Current Issues with Using the Justice System

Presently, most battered women advocates share the particular goal of freeing women from the harms of male violence, and usually, the broader goal of achieving gender, class and racial equality. Despite these common objectives, preferred strategies for accomplishing these developments vary, especially by whether or not the state⁹ should be utilized. This ongoing debate in literature creates a cleavage between those who cautiously welcome engagement with the state (feminist realists), and those who oppose collaboration with government

⁹ I refer to the 'state' loosely here since different definitions exist within the literature. In general, the state consists of all legal and ministerial divisions under the direction and funding control of the government. It does not include corporate or global entities.

funded institutions such as the justice system (abolitionists). This divide has fostered close examination of the issue through ongoing critical debate, but has also threatened the development of a more unified movement that might be better able to articulate its goals.

The Legal System: A Contradiction to Feminist Goals

On the one side of the debate, 'abolitionists' believe there is no value in engagement with the law because the justice system is inherently repressive and coercive. Lauren Snider (1991) remarks, "criminalizing more behavior, and thereby encouraging the state to step up control and repression in order to advance a movement whose basic aims are to lessen oppression, seems a strange strategy as well as an ineffective and counterproductive one" (256). The 'law and order' agenda is also problematic to Susan Edwards (1989), because it is reflective of the interests of the ruling class, and excessive criminalization and surveillance encroaches on civil liberties. Instead, abolitionists believe response should be anchored in compensation, conciliation, batterer education and community driven therapy that are independent from state governed institutions (Lewis et al. 2001).

While on the one hand, women can, and have used the power of the law in order to confront their abusers, the inclusion of intimate partner violence in the law and order agenda contradicts many feminist's goals. This is because the emphasis of criminal or civil law is on control and punishment rather than on empowerment and social change (Gotell 1998; Snider 1991; Barnsley 1985). As the feminine 'object' is under the protection of the state, and the criminal justice system remains the most feasible solution to violence in relationships, the authority and power of the masculinist state is reaffirmed, and feminist organizations take a back seat as a 'special interest group' (Gotell 1998).

Dawn Currie (1993) warns that law's progressive appearance persuades feminist counter-hegemonic forces to consent to its domination. Legal systems advertise an 'objective,' 'non-biased' position where every individual is treated equally and fairly. To assume law is neutral and autonomous, however, is to detach it from the human relations that uphold and reproduce structural and ideological patriarchy through everyday decision-making. Gender neutrality, Catherine Itzin (2000) argues, is unachievable because it does not exist. Males and females do not share equal access to rights and opportunity and these inequalities cannot be masked by the erroneous impression that they enter the courtroom on an equal legal playing field. For example, the very notion that the criminal justice system holds two opponents equivalent regardless of the context has resulted in the prosecution of a number of battered women (as discussed earlier).

The legal system's use of gender-neutral language, and the claim of equal treatment do not rid us of discrimination. "...[D]iscrimination is part of a system of power relations which needs to be addressed before the sexism can be 'extracted'" (Smart 1992:31). In effect, each piece of reformed legislation has the facility to change public perception of an issue, but also "re-affirms the ideology of the rule of law and this adds to the stability of the system of power found in capitalist society" (Collins cited in Edwards 1989:26). To put it simply, and to invoke Smart's terminology, (1992), law is sexist, law is male, and law is gendered. In terms of sexism, women have been awarded fewer resources, (as in child maintenance payments, or divorce), denied equal opportunities, and placed in situations where harm to them is ignored because they offer advantages to men (as in prostitution or unpaid domestic work). Currie (1993) remarks, "although law has seemingly progressive amendments and reformulations, these changes have not substantially altered the subordinate position of women" (39). Since women have remained an

underclass despite years of struggle, Smart (cited in Currie 1993) claims that feminism always concedes too much, because it accepts legal terms and policies in order to challenge them.

In employing a collaborative effort, it is important to consider that working directly with the state can lead (and has led) to the institutionalization of feminist goals while at the same time giving the impression that the problem is being addressed (Gotell 1998; Currie 1993; Faith 1993; Walker 1990; Price 1988). It is crucial to keep the possibility of cooption 'in check' throughout reform efforts, otherwise, "those committed to social change [may end up] being managed by the very agencies that the anti-domestic violence movement had originally set out to change" (Pence and McMahon 2003:58). Contradictory agendas can create conflict or mandatory compromise; thus, advocates may lose their radical space and their critical outsider perspective (Avalon 1999).

The overwhelming influence of governments and the legal system places feminists in a position of lobbying the government for changes to laws that discriminate against women, whilst seeking protection and security from the same oppressive state. This brings up a new question that current literature is dealing with: Are responders able to penetrate and reclaim a radical space in legal and state organizing discourse while resisting co-option? Jane Ursel (1991) offers an answer to this that is broadly examined in the next section. "The concept of an overly deterministic state which can co-opt all social movements is simply not a concept verified by history. It is also a concept which begs the question of what should feminists do while waiting for the revolution?" (265).

The Legal System: A Complement to Feminist Goals

Jane Ursel (1991), and other 'feminist realists,' welcome some collaboration with the justice system, and argue that the state's political legitimacy and legal apparatus can be used to help battered women achieve justice, secure funding for much needed services, and hold batterers accountable. Some collaboration with the state allows advocates and responders to draw from a wider array of resources according to women's particular needs. The main premise of this approach is that some state involvement is necessary for certain services, while others may be more appropriately delivered and controlled by the local community. This approach requires the identification of effective aspects of both types of responses (using the state, and not using the state) and *how* they are effective (Lewis et al. 2001). Evaluation techniques are ongoing, collaborative, and avoid confrontational tactics.

In considering the complex nature of the problem of male violence, and in reviewing what we know about this form of violence, it is reasonable to expect that some laws are capable of improving the position of women in society while others may be less capable, and even harmful. Even though there has been strong resistance to patriarchal power and control both in the home, and in a broader societal context, "[t]he speed with which the Canadian justice system embraced woman abuse as a crime attests to, among other things, the power of this lobby" (Currie 1998). The 'zero-tolerance policy' featuring mandatory arrest was implemented by most jurisdictions within a decade, and there are countless other victories to be celebrated that became realized *through* the act of criminalizing domestic abuse. There is still much ground to cover, but it is reassuring to recall that both resistance and power are dynamic and can flex or change direction rather quickly. Hoy (1986) reviews Foucault's position that "change does not occur...by

transforming the whole at once but only by resisting injustices at the particular points where they manifest themselves" (Faith 1994:20).

Critics who argue the criminal justice system cannot be considered a useful ally "may be underestimating the success of a variety of innovative legal remedies developed to help give battered women some immediate protection, such as restraining orders, expanded power of police to arrest, and the ability to hold arrested offenders to ensure a judicial review of bail and conditions of release" (McMahon and Pence 2003:56). Battered women sometimes have no other recourse than to turn to the state for protection, especially in periods of acute life threatening violence (Hanmer and Stanko 1985).

What alternate solution could we possibly create that could respond at one in the morning when a woman has a knife to her neck? Who's going to investigate when the perpetrator says she started it and he was acting in self-defense? Who's going to invest in the necessary equipment, training, and salaries to respond to millions of these cases? And when the perpetrator promises to stay away from the house, by what authority are we going to stop him when he breaks his promise? (De Santis 2004:4).

In the BC courthouse under study in this thesis, about two individuals per week approach the Family Court Registry to apply for a civil restraining order. This is the most common legal response available to women who take their own initiative (as opposed to police initiated) to try to end the violence in their lives. I argue that to deny women protection from violence under these circumstances in the interest of broader social change is a denial of her fundamental human rights. A legal response must be provided and be accessible to all who seek help from it.

The Civil Restraining Order

Even though civil restraining orders are used widely in Canada (and in many other countries), very few studies have questioned whether they actually work (Jordan 2004). Carlson, Harris and Holden (1999) found only five studies that

conducted such an evaluation, and all of them employed quantitative methods. Statistical methods used so far to evaluate the effectiveness of restraining orders are contradictory, and offer little insight about what is actually happening at the individual, ideological and institutional level of application processing.

Berk, et al (Davis and Smith 1995) found a *positive* relationship between obtaining an order and subsequent injury. In contrasting studies, the majority of battered women respondents argued that restraining orders are effective in reducing abuse (Iovanni and Miller 2001; Kaci 1994; Keilitz et al., cited in Grau et al. 1985), sending a message to their partner (Fischer and Rose 1995), and in doing the right thing for their children (Harrell and Smith 1996). Contradictions in the literature results partly from the use of different definitions and statistical measures of what constitutes 'effective' and 'victim safety.' Quantitative researchers rely on different indicators to measure the level of 'victim safety,' and it is questionable whether any one of these measures is indicative of actual safety and freedom from violence for all women.

In measuring 'victim safety' and restraining order effectiveness by looking at recidivism, Klein (1996) found that "the re-abuse rate was not different for those who dropped or those who kept their [restraining orders]" (207), indicating that the order had no deterrence effect. Similarly, women with permanent restraining orders were as likely as those without them to report continued violence (Harrell and Smith 1996; Klein 1996). In the same study, re-abuse was higher (35.7%) for orders with a no contact clause, and lower (27.3%) where contact was permitted.¹⁰ Data for these quantitative studies came from police reports that use a statutory definition that includes *physical* incidents but not other forms of violence (Davis and Smith 1995). Many battered women, however, have reported that prolonged verbal humiliation or

¹⁰ These findings could simply reflect that those issued a "no contact" order were a greater threat than those permitted contact, and thus more likely to re-abuse regardless of the order.

economic brutalities are often a worse experience than physical violence (Mooney 2000; DeKeseredy and Hinch 1991; Walker 1979). Therefore, when measuring restraining order effectiveness by looking at recidivism reports, it is important to include other forms of violence. Further, since many women do not report, police reports are not sufficient sources of data.

Fischer and Rose's (1995) study drew on victims' own accounts to measure safety, and in contrast, revealed great support for the restraining order. Ninety one percent of women felt they made a good decision by obtaining a restraining order, and ninety five percent were confident the police would respond promptly to any order violations. Importantly, the authors note that what changed in their respondents' circumstances to follow through with the application was not an increase in the threat of violence in their lives, "but the belief that some outside intervention would be available to them" (Fischer and Rose 1995:417). Women with support and resources, and who feel they have control over their outcome are much more likely to follow through with getting a protection order, calling the police, and testifying for the prosecution (Smith 2001a; Ford 1991). As Patty Ginn from the BC Institute Against Family Violence reminded me, "violence is not a choice. When women have the resources they need, they will choose a violence-free life for themselves and their children. But they have to have access [to resources]" (2005).

Interestingly, among studies that reported battered women's satisfaction with the restraining order, the same satisfied victims did not believe their abusers would actually comply or take it seriously (Iovanni and Miller 2001; Harrell and Smith 1996). The intended use of a restraining order of providing legally actionable long-term protection to battered women may be of less importance than short-term benefits of initially taking a stand against the abuse. Due to the privileged and powerful status held by the Canadian legal system, women can use the law as

leverage to interrupt the pattern of domination and abuse in the relationship. "Some women emphasize the need to have the law act, in one form or the other, as a 'loudspeaker.' The [restraining order] was deliberately chosen because it was the only form of communication to which the abuser would listen.." (Fischer and Rose 1995:420).

Even with contradictory and limited evaluative research available on restraining orders, it is perceptible that court orders have been useful to some recipients, but not others (Davis and Smith 1995). Some researchers have found that they are more effective between couples without children or long-term financial or emotional connections (Fernandez et al. 1997), and in cases where prior injuries were not severe (Fernandez et al. 1997; Harrell and Smith 1996; Grau et al. 1985). It "was only when the original violence was not severe, when the men were employed, and when [men] had no prior criminal, drug, or alcohol histories that restraining orders were found to prevent future battering" (Fernandez et al. 1997:42).

Based on these findings, the restraining order seems to be inadequate in helping the most vulnerable: women who are economically and emotionally dependent, women whose batterers are capable, or willing to use 'severe' violence, and women with children. Civil restraining orders may empower some women, especially when they are not emotionally or economically dependent on their batterer, "but the orders' ultimate effectiveness rests on a concerted effort by police to arrest and by courts to enforce these orders and impose meaningful sanctions when the orders are violated" (Iovanni and Miller 2001:316).

Proposed solutions to current legal response "must include fundamental changes directed not only at assisting victims and reacting to offenders but also at the institutional and ideological means by which the problem itself is sustained and eroded" (Dobash and Dobash 1988:66). Ongoing discussion about the connection

between power and knowledge will work to demystify the 'neutrality' or 'equal' treatment of the legal system (Finley 1994; Currie 1993). For example, a major contradiction that still pervades the notion of law's neutrality and feminism is that objectivity is best achieved where the subject has no 'bias,' or prior knowledge and experience with the issues under inquiry. In contrast, bias results when we *fail* to begin with women's experiential accounts. Dorothy Smith urges researchers to explore the "manifestations of ideological processes in action [a]s an empirical task which must begin from the reality of women's lives rather than grand theories of the state or class/gender relations" (Currie 1993:55). In beginning with experiential accounts, researchers may direct our inquiry toward finding out what actually happens in the institutional managing of abused women's lives, revealing at which stages women's safety is ensured, and at which stages it is compromised.

Klein (1996) found no statistically significant difference between characteristics of applicants who retained their restraining orders and those who requested the order be dropped early; inconsistencies seem to lie in the institutional response rather than between individual women. Are there certain institutional or ideological conditions that foster greater protection of some victims and not others? Pence argues that the system's inability to provide effective protection is not because battered women do not follow the necessary steps, or "do not react to being beaten properly - it is ineffective because it handles cases in a generic way that does not account for this unique crime and the distinct response it requires" (Shepard and Pence 1999a:31).

Institutional Ethnography in Researching Domestic Violence

Ellen Pence (2001; 1997) has undertaken a focused research approach using Institutional Ethnography to study criminal domestic violence case processing in the

United States. Rather than provide a general critique of the way the justice system handles domestic violence cases, she has used institutional ethnography as a line of critique to construct a descriptive account of how the legal processing of battered women's cases are put together. She has been able to identify specific, unintended, yet harmful points in the process that do not ensure women's safety (so far). Her inquiry has been located in the USA mainly, but the relevance and usefulness of her findings are widespread.

Based on the notion that there is no single formula for safety and accountability, Pence and her colleagues have developed an audit tool¹¹ that can be adapted and used in any jurisdiction by individuals interested in improving institutional and legal response to domestic violence cases. The audit is a model that researchers and advocates may use to gather information about their local court-ordered interventions, and provide recommendations to replace problematic conceptual and administrative procedures with new ones (Pence and McMahon 2003). The primary focus of this audit is the safety needs of women who have been abused, and inquiry begins from the standpoint of these women.

This thesis is based on some of the main principles used to develop the audit, especially in identifying specific disjunctures in the civil restraining order application process, embedded in texts, that effectively exclude information being brought forward about the nature of the violence to which a woman has been subjected. As Pence has demonstrated through her research, reform to the current system is possible, and there is potential to provide short-term victim safety, while minding the organizational and ideological pressures that have made the justice system unresponsive to victims of domestic violence in the first place.

¹¹ This tool is called the *Praxis Safety and Accountability Audit Tool Kit*. For more information, see http://www.praxisinternational.org/SA_frame.html

Chapter 3: The Application Forms

I. Introduction

Obtaining a Civil Restraining Order in British Columbia

Every day, individuals who have experienced violence in intimate relationships apply for restraining orders through the BC civil courts. The Family Court Registry at the selected BC courthouse alone receives about two applications per week. Individuals seeking restraining orders are instructed to fill out three forms. The *Application to Obtain an Order* is a standard form also used for custody, guardianship, access, and maintenance applications. Applicants often file restraining order applications at the same time as the aforementioned, but they may be done separately. The *Affidavit* is the second form required with each restraining order application. It provides a sworn statement of evidence for the case.

The party whom the restraining order application is filed against is called the *respondent*. The respondent is served with copies of the application forms, a notice to appear in court and a blank *Reply*¹² form. The Reply form is to be filled out by the respondent who selects the category that he either agrees or disagrees with the application, providing reasons for his claim for or against it. As soon as either the registry receives the reply - or his deadline has passed and he has not returned it - a hearing date is set for both parties to appear in court.

This process of serving the respondent is quite lengthy and complicated; applicants may wait months before obtaining legal protection. They must locate and serve the other party with the documents, wait for the other party to submit the *Reply*, (for which they are given up to 30 days), wait for a hearing date (two to six

¹² This form will not be discussed at length in this thesis. See Appendix A for blank Reply form.

weeks), appear in court possibly several times, and then wait for the order to be issued. This procedure is labeled "A) Serve with application" on *Diagram 1* at the end of this section. Since for many women, this process is too long to wait for legal protection, a third form may be filled out to request immediate protection, and to delay the serving process until after an interim order is granted.

The *Ex Parte*¹³ *Family Application* is the third application form, and is the only 'optional' form for restraining order applicants. The Ex Parte application is intended only for serious family violence situations that require immediate protection.¹⁴ Applicants who apply for an Ex Parte restraining order are not required to notify or serve the other party prior to receiving a protection order. The Family Clerk delivers the completed Ex Parte application to the judge who decides whether or not s/he will '*hear*' the application prior to notifying the other party. Hearing an application simply means allowing the applicant a few minutes to informally allege the urgency of her case. If the judge decides not to hear it, the applicant may either decide not to pursue the application, or she may serve the other party first. This procedure is labeled "B) Serve before hearing" on *Diagram 1*.

When a judge decides to hear an application, a short hearing¹⁵ is arranged either on the same day, or in the next few days where the applicant is given about 15 minutes to speak in front of the judge. At this point the judge may grant interim protection, or deny it, ordering that the other party be served and appear for a Reply hearing. Both the applicant and respondent are then required to return for a hearing. This procedure is labeled "C) Serve before granting" on *Diagram 1*.

¹³ The latin term "Ex Parte" in this context means that interim protection order may be granted without notifying and hearing from the other person first.

¹⁴ Since an overwhelming majority of applicants apply for Ex Parte restraining orders, completing this third form is assumed throughout the thesis, while making initial note of the non-Ex Parte route. Both Robin and Lin applied for Ex Parte orders.

¹⁵ The words 'hearing' and 'trial' are interchangeable in family court.

More frequently, judges grant interim orders, and respondents are served after an Ex Parte (interim) order is issued. This procedure is labeled "D) Serve after Ex Parte granted" on Diagram 1. Variation between Ex Parte applications mainly has to do with the number of days the respondent is given by the judge to send in the Reply. In sum, there are three possible outcomes after an Ex Parte application is submitted:

- 1) Application will not be heard: applicant must serve the other party first, and allow the respondent *up to* 30 days to reply¹⁶ (B on Diagram 1)
- 2) Application is heard: judge decides after the mini hearing the applicant should serve the other party first, and allow the respondent to reply in a set number of days (C on Diagram 1)
- 3) Ex Parte order granted after mini hearing: applicant receives interim protection order, respondent is served with a summons to appear within a set number of days (decided by the judge). (D on Diagram 1)

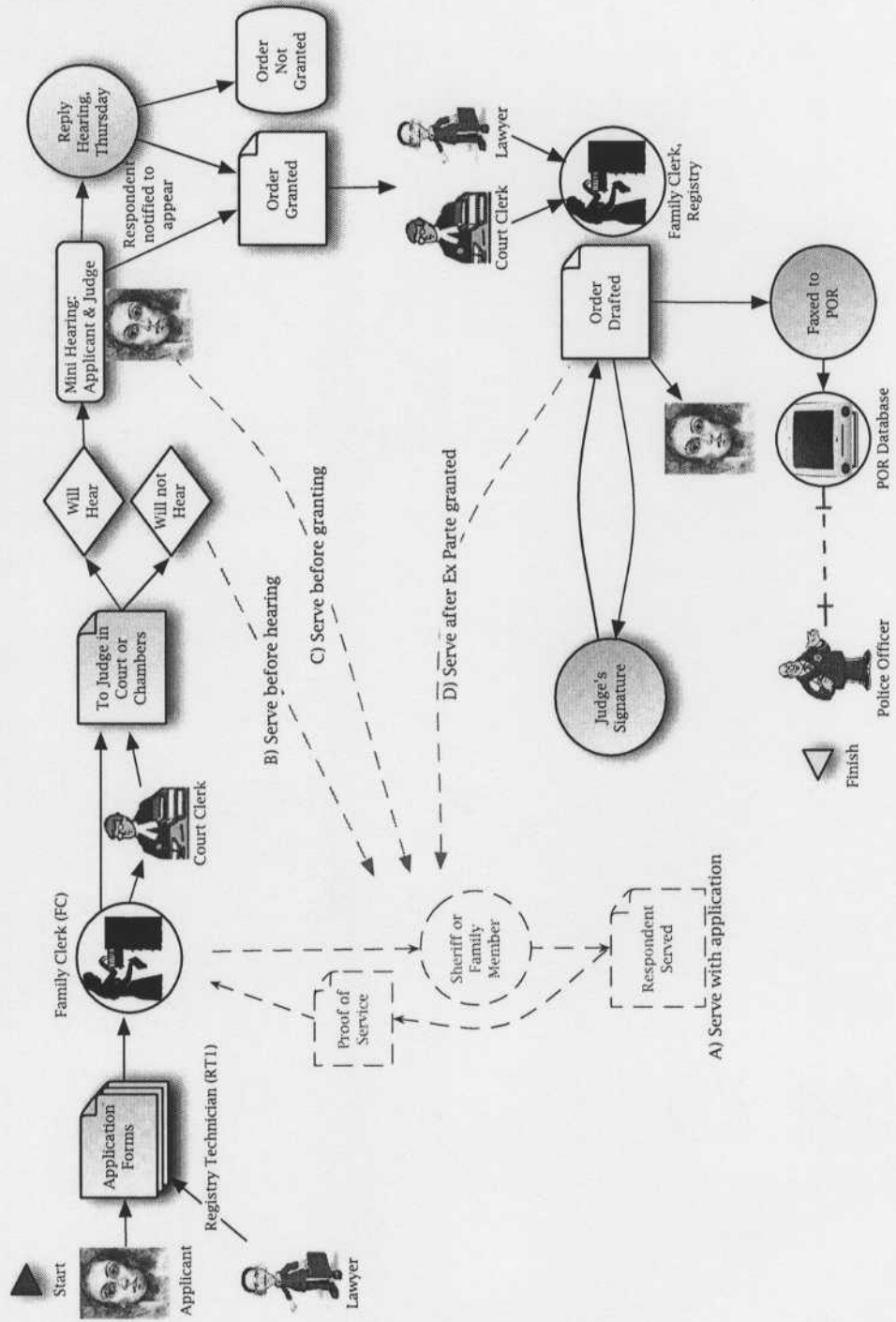
On all three application forms, though in slightly different contexts, there is space for the applicant's own words to explain her circumstances and reason(s) for applying for the restraining order. Since the judge makes a preliminary decision about the application based on the narrative written on the Ex Parte application, this is the most important part of the application process. What the applicant writes to describe her situation in her own words is critical. She must provide concrete detail of a kind that will convince the judge that a restraining order is immediately necessary.

Shortly after a protection order is granted by the courts, a family clerk drafts the order and faxes it to a provincial database called the Protection Order Registry (POR). Clerks at the POR enter the court order information into the database. Police detachments and other public agencies have access to the POR, and when they receive calls from a threatened individual who holds a restraining order, are

¹⁶ When judges make this decision, they may shorten the 30 days to 3, 5, or 7 days if they feel the application exudes some urgency.

supposed to consult the database before responding. Diagram 1 provides a visual representation of the restraining order application process. As mentioned in Chapter 1, each subsequent chapter focuses on one piece of this larger diagram adding to the sequential account of application processing.

Diagram 1. Sequences of Action: Civil Restraining Order Application Processing in BC



List of Research Participants and Pseudonym Key

The following is a list of research participants by job title. The restraining order applicants and their family members have been given names. Alternatively, employees were assigned a pseudonym that corresponds with their job title. This is because it is the specific work roles of practitioners that are important. I anticipate having job titles immediately visible and connected to activity described will support readers' comprehension throughout the discussion.

Family Court Registry:

Court Clerks - **CC1** (female), **CC2** (female)
 Family Court Registry Manager - **MR2** (female)
 Registry Technician - **RT1** (female), **RT2** (male)
 Family Clerk - **FC** (female)

In-Court Practitioners:

Provincial Court Judges - **J1** (female), **J2** (male)
 Family Lawyer - **LAW1** (female)
 Duty Counsel - **LAW2** (female), **LAW3** (male)

Applicants:

Robin is an American Italian female in the age bracket: 30-39. She classified herself as low-middle class, and has one child: [Sam]; Ex-partner: [Nathan]

Lin (pronounced Leen) is a Chinese Ukrainian female, in the age bracket: 30-39. She classified herself as low-middle class, and has three young children, one of which is shared with the individual on her restraining order.

Protection Order Registry:

POR Supervisor - **POR-S** (female)
 POR Clerk - **POR-C** (female)

Police Officers (from four different detachments in BC)

Pol-1 (male), **Pol-2** (male), **Pol-3** (male), **Pol-4** (female), **Pol-5** (male), **Pol-6** (male)
 Police Victim Services - **PVS** (female)

Applicants' Lived Experience: Robin and Lin

By the time applicants arrive at the courthouse, many of them have approached various other services first, and some apply for a restraining order several times before they are successful. For example, Robin attempted to obtain a restraining order three times over a two-year period - once through a lawyer approaching the civil court registry, and twice by visiting the local police station.

I was told by two different cops both times that - and this is a direct quote - I'll never forget it. He said, 'unless you have a knife to your throat, a gun to your head, or a third party witnesses him threatening your life, you will not be able to get a restraining order against him.' Two different cops, two different times - the same exact line (Robin 2005).

Robin's final and successful attempt to obtain a restraining order followed an incident over Christmas when her ex-partner would not return their son after a court-approved access visit.

Before Lin was granted a restraining order, she endured eight months of severe violence beginning when she was pregnant with their daughter, her third child. After her ex-partner moved out, he was still able to climb the outside wall of her apartment building to get onto the balcony. She employed a variety of coping techniques on her own before approaching the justice system for help. She described one of her methods.

Back in February of 04 when it was really bad. Like there was a lot of violence. There was so much violence it was crazy - I actually, cause he gets up on this side of my balcony, so...I left the broken glass there for, I don't know, two weeks? And I just made sure my kids, like, during the day, I'd take it down, I'd just like sort of scoop it back into my little pile, and when I went to bed at night, I just sprinkled it out (Lin 2005).

Lin realized that her ex-partner's violent behavior was not going to stop, and she needed to maintain a safe distance away from him to prevent outbursts.

...if I don't keep my distance, the chances of him smackin me is pretty good. And I will not tolerate being smacked around, I will not tolerate being pushed into a closet, or locked into the bathroom or anything ever again...I've lost so

many material things, I've gone through *so much* - just so much pain, I don't even know what pain is anymore (Lin 2005).

Lin's batterer was charged with threats to bodily harm and then assault.

A no-contact provision was added to his probation order prohibiting him from having any contact with her, but every time he got out of jail, Lin would have to go back to court to have it put on his new probation. Further, the police did not enforce the terms on the order, so it was not useful to Lin at all. She explained:

They could only come here, and take documentation, and like, ask him to leave. They couldn't arrest him; they couldn't charge him; they couldn't do anything with a no contact order. A restraining order is the only thing the police can enforce...So I couldn't phone anybody, I couldn't do anything. All I could do was run. Take my kids and run - and we have run, like four or five times. I've picked up my kids, and I've run in my bare feet to the nearest phone (2005).

Lin now has mixed feelings about her restraining order, pointing out the order's potential usefulness and its limits. She declared:

A restraining order is very beneficial for people who need it. But what I don't like about it is - you see how my ex just can come and go, and it's just so hard to phone the police just to get them to enforce it? That's how women die. That's how women get, you know, the man completely loses it. And my -- I've seen him lose it. Like to the point where I'm in a corner, and I'm like, 'ok, ok, ok, ok.' There's gotta be a better system...(2005).

Similar to Robin's circumstances leading to success in obtaining a restraining order, Lin's ex-partner also threatened to not give her back their child after an access visit. This incident caused a fight in the street where police were called to assist. She went to the Victoria courthouse the following day to apply for Ex Parte custody order for their daughter.

II. Approaching the Registry: Retrieving the Forms

To make an initial restraining order application, applicants visit the local courthouse in person to retrieve the required forms. Often applicants have been sent to the family court registry by a police officer, a social worker, a probation

officer, or a community group worker who has told them to get a restraining order. They arrive at what is known informally as the "family section," with no prior knowledge about the procedures or requirements (Lawyer: Law2 2005).¹⁷ Robin recalled her first experience approaching the family court registry:

When I first walked in there the first couple of times, I'm sure I was shaking the whole time. It was pretty scary, and I couldn't articulate what I wanted to say, I was so nervous (2005).

There are two wickets open at the Family Court Registry, where front counter clerks, called *registry technicians* respond to a variety of matters through a transparent partial divide between themselves and the public. A line-up consisting of duty counsel, law students, and members of the public remains steady throughout the day. Requests vary widely, as this section deals with divorce proceedings, small claims, court of appeal, and all Supreme and Provincial Court applications. The restraining order application is just one of the many matters registry technicians attend to daily. Depending on the time of day, and the types of requests people have, wait time in line varies anywhere from 5 to 25 minutes. To submit accurate and complete paperwork, applicants usually need to wait in line several times to try to clarify sections of the application.

According to the script supplied by RT1¹⁸ (registry technician), the first question registry technicians ask an individual seeking a restraining order is: "Is this a civil or a criminal restraining order? Are you applying civilly, or criminally?" (RT1 2005). Most applicants at this initial stage do not know the answer to this question.

We have to dig this information out of them, cause sometimes they really don't know what they're asking for. Again, they're confused, it's hard because they've got someone that's been maybe violent or whatever against them, and you're saying - do you want to press civilly, or criminally? And we can't tell them which way to go. And it's hard, they're like: 'Well, I don't know.' (RT1 2005)

¹⁷ From this point on, interviews with this lawyer will refer to her pseudonym: Law2.

¹⁸ From this point on, interviews with this registry technician will refer to her pseudonym: RT1.

RT1 and I agreed that upon given the choice in similar circumstances, neither of us would know whether to choose civil or criminal; many applicants are very unsure and ask questions like: 'What do most people do in my shoes?' Registry technicians are not permitted to reveal which stream (civil or criminal) seems most suitable for each individual or which route most people go through with a similar set of circumstances. They do however, have to somehow make sure that the applicant is indeed in the right place (the civil vs. criminal section). For this screening they ask, 'Do you want to press charges or not?' (RT1 2005) If the applicant does not want to press charges, the civil court is the appropriate starting place for them. If they would like to press criminal charges, they must proceed in the criminal section. This important decision must be made before proceeding, since the process and outcome of the two paths differ greatly.


Another question registry technicians may also ask to determine applicants' proper course is, 'Are there any children involved in this application?' Aside from pressing charges, the presence of children sets further criteria for an application to be classified a 'family matter,' and to proceed through civil court. If the applicant does not have children or a familial connection with the respondent, the matter is usually directed toward the criminal section because two parties without children do not automatically fall under the scope of the Family Relations Act, the act that governs civil restraining orders. An applicant with children related to the other party may *choose* to follow the criminal path, but they must then press charges, and once the process begins, they do not have the option to halt the process. This is because criminal court "matters automatically involve the state against the abuser, since the accused poses a public safety concern. In civil court, it is just a family matter" (criminal section switchboard operator).

Registry technicians' assessments of applicants' answers are informed by their understanding of what each court's jurisdiction is, and what qualifies as a Family Relations Act matter. The Family Court Manual is a policy manual referred to by all civil court staff. It states,

"Family Court applies legislation that governs how matters arising from family breakdown are to be resolved. The Acts...set out *what* must be done, while the Provincial Court (Family) Rules (PCF Rules), the Provincial Court (PC(CFCSA) Rules), and the Provincial Court (Adult Guardianship) Rules (PC(AG) Rules) specify *how* to do it" (Ministry of Attorney General 2004).

Registry technicians follow these guiding principles to decide for particular cases 'what must be done,' and 'how to do it' if it is outlined in the Rules, but they must not deviate from this governing discourse. Applicants must not be led in a direction they would not choose independently. As soon as the clerk determines the applicant is indeed in the right place, s/he provides the applicant with the three application forms.

Figure 1. Application to Obtain an Order



APPLICATION TO OBTAIN AN ORDER
In the Provincial Court of British Columbia

COURT FILE NO. _____

COURT LOCATION _____

FMEP NO. _____

Case name
Your name. ①

Name of other party.

Your current address for service. ②

Other party's address for service.

What are you asking for in this application? Check the appropriate box(es) and fill in any required information. ③

Attach copies of any orders or written agreements. ④

Fill in the required information for any child(ren) to whom the application applies. ⑤

Describe the child access arrangements you are requesting, if applicable.

In the case between:
NAME _____

And:
NAME _____

Filed by: NAME _____ DATE OF BIRTH _____
ADDRESS FOR SERVICE _____ CITY _____ **APPLICANT**
PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

Notice to: NAME _____ DATE OF BIRTH _____
ADDRESS FOR SERVICE _____ CITY _____ **RESPONDENT**
PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

IMPORTANT NOTE TO RESPONDENT:
If this application includes a claim for maintenance, you are required to file financial information with your reply. If you do not, the court may attribute income to you and set the amount of maintenance to be paid. The applicant has estimated your gross annual income as set out in item 3 below.

I am applying for:

custody guardianship access

maintenance for a child spousal maintenance parental maintenance

an order prohibiting the respondent from interfering with the child(ren), and/or
NAME _____

an order restraining the respondent from harassing the child(ren), and/or
NAME _____

other order (SPECIFY) _____

1. Orders and agreements
Are there any court orders or written agreements between the parties concerning separation, custody, access or maintenance?

No orders I am attaching copies of all other orders

No written agreements I am attaching copies of all other written agreements

2. Children (complete if you are asking for custody, access, child maintenance or a restraining order)

Name(s) of child(ren) _____ Birthdate(s) _____

My relationship to the child(ren) is _____

The respondent's relationship to the child(ren) is _____

The present custody arrangements for the child(ren) are: _____

(If applying for access) I am asking for access to the child(ren) as follows:

FFA 003 05/2003
Form 1
(CPC 7530854001)

COURT FILE

Page 1 of 2

APPLICATION TO OBTAIN AN ORDER

What child or spousal maintenance arrangements are you requesting? Check the appropriate box(es) and fill in any required information.

CASE NAME:
COURT FILE NO.:

3. Maintenance (complete if you are asking for child or spousal maintenance)

The current maintenance arrangements are:

I believe that the respondent's gross annual income is \$ because:

I am asking for: (complete only if you are asking for child maintenance)

- maintenance in the amount set out in the Child Support Table for NUMBER children
special or extraordinary expenses, as follows:

6

Information for Applicant and Respondent

If this application contains a claim for maintenance, you must complete a financial statement in Form 4, following the instructions on that form, if:

- there is a claim for spousal or parental maintenance, or
there is a claim for child maintenance and one or more of the following applies:
- you are the person being asked to pay;
- the claim is for an amount other than the amount set out in the tables of the Child Support Guidelines;
- there is a claim of undue hardship;
- there is a claim for special or extraordinary expenses;
- the parents have split custody (that is, there are 2 or more children and each parent has sole custody of at least one child);
- the parents have shared custody (that is, each parent exercises access to or has physical custody of a child for not less than 40% of the time over the course of a year);
- one or more of the children for whom maintenance is claimed is of the age of majority or older;
- the person who is being asked to pay is not a biological or adoptive parent of the child but has acted as a parent to one or more of the children for whom maintenance is claimed.

You may also provide this financial information before receiving the respondent's reply, in order to avoid delay, if you believe that the income of the respondent from whom child maintenance is claimed is over \$150,000 per year or that the respondent will claim undue hardship, special or extraordinary expenses or make a counterclaim for maintenance.

If you are asking for a restraining order, explain why you believe a restraining order is necessary.

4. Restraining Orders (complete if you are asking for a restraining order)

I am asking for an order prohibiting the respondent from interfering with or harassing the child(ren) and/or myself because

7

Blank lines for explaining the need for a restraining order.

Note to respondent: If you fail to file a reply within 30 days of being served with this application you will not receive notice of any part of the proceeding and the court may make an order against you.

Sign your name and state today's date.

State name of lawyer, if any.

PFA 003 05/2008 Form 1 (OPC 7530854001)

Dated

Name of applicant's lawyer

Signature of applicant or applicant's lawyer

In what I labeled section 3 on the Application to Obtain an Order, all the possible orders one may apply for are listed with check boxes beside each one. Applicants may choose any or all of these at the time for of application, however, if they return at another time to request a new type of order, they must fill out the forms again. Restraining order applicants choose from the last three of these check boxes. I was unable to distinguish a difference between two of these. One reads: (I am applying for) "an order *prohibiting* the respondent from *interfering* with the child(ren), and/or__," and the other reads: "an order *restraining* the respondent from *harassing* the child(ren), and/or__." In what I have labeled section 7, the words interfering and harassing are both included. The encompassing words 'interfering' or 'harassing' provide an inclusive framework that a plethora of criminally actionable activities can fit into. RT1 did not know the difference between interfering and harassing, nor did she know what would go in the "other order" space. Law2 confirmed that there is a difference between harassment and interference, but had difficulty putting it into words.

Harassment is a course of conduct that - is intended to induce fear in, you know. And interfering is just - anything. So interfering is broader. But you're right, probably a layperson filling this out wouldn't know the difference. And I'm not sure why they're both on here...But normally, if I'm helping someone tick them off, I tick both of them off (Law2 2005).

Section 4, *Orders and Agreements*, is meant for the applicant to identify whether any previous orders exist. It is important for the judge to know about any previous orders so that they have a historical context of the case. Moreover, Provincial Court does not have the power to amend an order that was granted in an upper court (Law2 2005). If there were previous Supreme Court orders, the application would have to return to Supreme Court for variation. Applicants usually select "no orders," and "no written agreements" in this section, but when RT1 checks the database, she finds that there often *are* previous orders and/or agreements.

There are several reasons applicants may not report previous orders. First, previous orders are sometimes from other jurisdictions, in which case, the applicant would have to go back to that community to apply for any new orders, or fill out another application to get authorization to have the files transferred over. Some applicants may try to bypass this obstacle. Second, applicants may not want the details of past circumstances to affect their new application. Third, and probably the most common, is that applicants do not have copies of the old orders to attach to the new application, especially since they would not know to bring them until they have already arrived at the courthouse. The form's selections are either that there are no orders, or that they are attaching copies of them. There is no selection that there *are* orders, but they are *not* attaching copies.

Section 5 gathers information about children that will be affected by an order granted and Section 6 records the respondent's income so that if the applicant is applying for maintenance, an amount can be determined. Robin's ex-partner is not required to provide maintenance payments for their shared child because her income fit into a category on the Child Support Table that was deemed high enough to support their child on her own. However, she explained that,

On paper my income seems really high, but that figure is not accurate. I am supporting my son alone; [Nathan] does not pay any child support, and my legal bills are through the roof. So if they're looking for my ability to viably function in my community compared to everyone else, I would classify myself as lower class. But that's not what they were looking for" (2005).

Section 7 is the most important portion of this application, as it contains the reason and circumstances that must convince the judge to grant a sufficient order.¹⁹ This section is discussed in depth in Chapter 4: *Filling out the Forms*.

¹⁹ An example of a narrative that was not heard can be found in the section: *Hearing Decision* in Chapter 4. An example of a successful narrative is shown in the section: *Judicial Decision Making: Determining Severity*, also in Chapter 4.

Like the Application to Obtain an Order, the Affidavit is a generic, formal court document that accompanies all Provincial Family Court order applications. Although the last part of what I have labeled section 2 solicits a narrative serving a slightly different purpose than the narrative in the other applications, it contains similar information. The narrative on the Application to Obtain an Order seeks the reason(s) for applying for a restraining order; the narrative on the Ex Parte form is intended to provide justification for the application to be heard before notifying the other party. The narrative on the Affidavit is a sworn²⁰ statement that contains facts considered by the applicant to be relevant to the application.

More space is supplied on the Affidavit, as it is supposed to contain full sentences that detail *how* the person knows the sworn facts, and specific evidence that supports each claim. The Affidavit serves as the legal assurance that the applicant's experiences as written are factual. Most commonly, the applicant completes the Affidavit, but another individual who is familiar with the applicant's circumstances, such as a neighbor, co-worker, relative or friend, may also fill it out.

If someone other than the applicant completes the Affidavit, they must know exactly what court order(s) the applicant is applying for because it needs to be named in section 2, where it states, "I make this Affidavit in relation to an application by [name] for ____." After filling in the applicant's name, they would write for example, 'for maintenance for a child, a cancellation of an earlier order, and restraining order.' Often, people filling this out for a friend or co-worker know the gist of the problem, but do not know *exactly* what the applicant is applying for. If not completely sure, the individual must go back to the applicant and figure out exactly what to write. It becomes a "huge hassle - you can't sign the Affidavit without knowing what form they served on the respondent" (Registry manager: MR2

²⁰ Signed in the presence of a commissioner.

2004).²¹ MR2 declared that this happens quite often, causing great frustration.

Despite the "great frustration," and "huge hassle" the Affidavit creates,

...very often the judges won't read [it]. They want people to get up in the box and give sworn testimony because that's what these judges do is listen to people's evidence and uh, try to figure out the veracity of it. And they can't do that from reading a piece of paper. They need to have--to see the person and their demeanor (Law2 2005).

Part of a judge's assessment in restraining order hearings involves how individuals conduct themselves, especially toward their ex-partners. This is an indicator of who the instigator at home is because "if they are reacting or overpowering in the courtroom, they are almost certainly reacting at home" (J1 2005). Some judges prefer to assess the situation in court and may not read the application forms, and some rely more heavily on what is written on the Affidavit. Lin's case, for example, was stood down by the judge because she hadn't filled out an Affidavit, but when she returned to court with the form completed, the same judge decided not to read it.

²¹ From this point on, interviews with the registry manager will refer to her pseudonym: MR2.

4. Have your concerns been reported to the police, a social worker or child protection official? If so when?

5. If your application is to prevent the respondent from removing children from this jurisdiction, what specific information do you have that the respondent intends to leave this jurisdiction permanently?

6. If you know where the other party can be located, please provide the relevant details.

Applicant for Ex Parte order

Date _____

The Ex Parte application shown here was created by a Provincial Court Judge in response to the rising number of incoming urgent applications. Since restraining orders by nature tend to be urgent, this questionnaire has become a third component in over 90% of restraining order applications filed at the courthouse under study (Family Clerk: FC 2005).²² The shift took place after lawyers commonly encouraged their clients to apply for Ex Parte orders (as opposed to the lengthy traditional process of serving the other party first),²³ because they knew the orders offered quicker protection. While lawyers encourage these applications, court staff discourage them. A Provincial Family Court Judge (J1)²⁴ reflected on the gradual shift toward more common usage of the Ex Parte application:

There were so many Ex Partes coming in and a lot of them are unnecessary and didn't meet any criteria for an Ex Parte order...then it got pretty lax and, you know, 'well I don't know what he's gonna do, he might come to the house, and that wouldn't be good.' So these Ex Partes got issued more and more...[Applicants] would come in by themselves and get an Ex Parte order. And so they'd beat the whole system (2005).

'Beating the system' to J1, refers to applicants who bypass serving notice.

Despite the long processing time and lack of interim protection, practitioners and judges prefer the lengthier process, because the served respondent has the opportunity to prepare and present his case in front of the judge also. The common argument, J1 identified, is "to err on the side of caution, and give her the Ex Parte order. And I might have said that 10 years ago - I don't say that anymore" (2005).

Registry staff are under pressure to keep the number of urgent applications to a minimum and thus, sometimes resent Ex Parte applicants. This is because there has not been any formal legislative or administrative rule change that allows Ex Parte orders to be granted so freely and in such high numbers. The family clerk does not "like to do them much, especially Friday at 3 or 3:30" (2005), because she is

²² From this point on, interviews with this family clerk will refer to her pseudonym: FC.

²³ See Diagram 1 for this process, shown in dotted lines, labeled: A) serve the respondent.

²⁴ From this point on, interviews with this judge will refer to her pseudonym: J1.

wrapping up for the day, and knows the judge wants to go home. FC complained that some applicants "wait four months before they decide they suddenly need to come in to court on Friday at 4:00. It's like, 'oh yeah, big rush'" (2005).

The Ex Parte application itself deters applicants. Sections 2 and 3 read:

To proceed in the absence of the other party is only done in the most **urgent** and **exceptional** circumstances...As noted above, ex parte applications are exceptional and usually only granted where circumstances have lead to an emergency. Please outline any information that you consider relevant to the **continued** existence of an emergency... (Court Services n.d: bold in original)

The family clerk reflects on the front line staff's role in making sure the applicant's situation is appropriate for Ex Parte processing:

[RT1] has the tough job, and she hates it. Like, not - shouldn't speak for her, but I know she's expressed that - when they come, like we have to say, '*is it urgent?*' you know, because, the judges would prefer, I mean, you always prefer to have both parties there (2005).

Hearing from both parties, and permitting equal court time is a fundamental principle of judicial tradition. J1 talked about the great difficulty in only hearing one party initially, because once Ex Parte orders are granted,

...you can't get back into court that fast [to hear from the respondent]. So it's a big problem when someone gets an Ex Parte order. It could be based on a pack of lies...and um, it's always a tough call, cause what if it is a pack of lies? How would we know that?...It's taken a tremendous amount of effort and time for that responding party to get back and do anything about it...And the longer one party has say custody, or control, the more difficult that is to change at a later date. So it's a tactical advantage for somebody to try to get an Ex Parte order (2005).

In this statement, J1 expresses a decontextualized view of domestic violence, identifying that the "big problem" is the granting of an Ex Parte order, rather than the violence an applicant is enduring. On the one hand, this statement reflects a strong belief that all parties deserve the 'right to a fair trial' and should have equal and fast access to justice. On the other hand, the belief that all parties must be treated fairly comes into contradiction with the possibility that an Ex Parte applicant may indeed be exposed to serious violence. The two values lie in opposition

creating a challenge that the judge must sort out for each case. In other words, the judge needs to decide which applications are 'worthy' of denying the respondent equal access to the system. Irrespective of the number of urgent applications that come in, Ex Parte applications that deny the respondent equal access must be kept to a minimum. Each time an Ex Parte order is granted, the approving judge has failed to uphold this important standard of fairness.

The family clerk's (FC) doubts about the urgency of applicants who arrive Friday afternoon also parallels the view that women seeking protection from violence construct fictitious stories, or try to "beat the system." J1 declared that too many women are getting interim custody *through* Ex Parte orders,²⁵ and that "they used to try to run the border with [their children]" (J1 2005). In other words, she saw women as obtaining Ex Parte restraining orders tactically in order to gain control over children, rather than as trying to escape violence. This decontextualization of the violence also presumes that the struggle to 'gain control' of the children is between a mother and father who begin on equal grounds, with the same level of power and ability, and the same desires and strategies to gain it. J1 affirms her view about control-seeking applicants by pointing out that

most of the time the interim order is all [applicants] want. They don't care about the final order - they just wanna have the control for that period of time...I sort of say, you know, families have a greater responsibility themselves to deal with some of these things. And we only exacerbate the problems by putting one person in control without even hearing [both sides] (2005).

Presumably, there are women who try to tactically obtain a restraining order as a means to 'get back at,' or manipulate the other parent, but it is extremely consequential to hold this general assumption about all other urgent applications at the onset.

²⁵ Ex Parte restraining orders automatically grant interim custody to the protected party, since children require the same protection.

Generalized assumptions about urgent applications reflect another problem in the current institutional practice worth noting. On the one hand, the lengthy application process that involves serving the other party initially conforms to the principles of justice and fairness, but does not adequately provide protection against violence. On the other hand, the measure introduced to adequately deal with urgent cases (the Ex Parte process), is one that not only violates the same principle of justice that centralizes hearing from both parties, but in this judge's view, actually exacerbates problems in the family. Despite the great reluctance to grant Ex Parte restraining orders, and the belief that granting them just "makes the fire burn really hot," (J1 2005), most judges decide to hear them, "because, you know, what if something tragic happened, and you hadn't (heard it)?" (FC 2005). FC, J1, and RT1 are all mindful that not allowing an urgent application to proceed can lead to a tragic outcome.

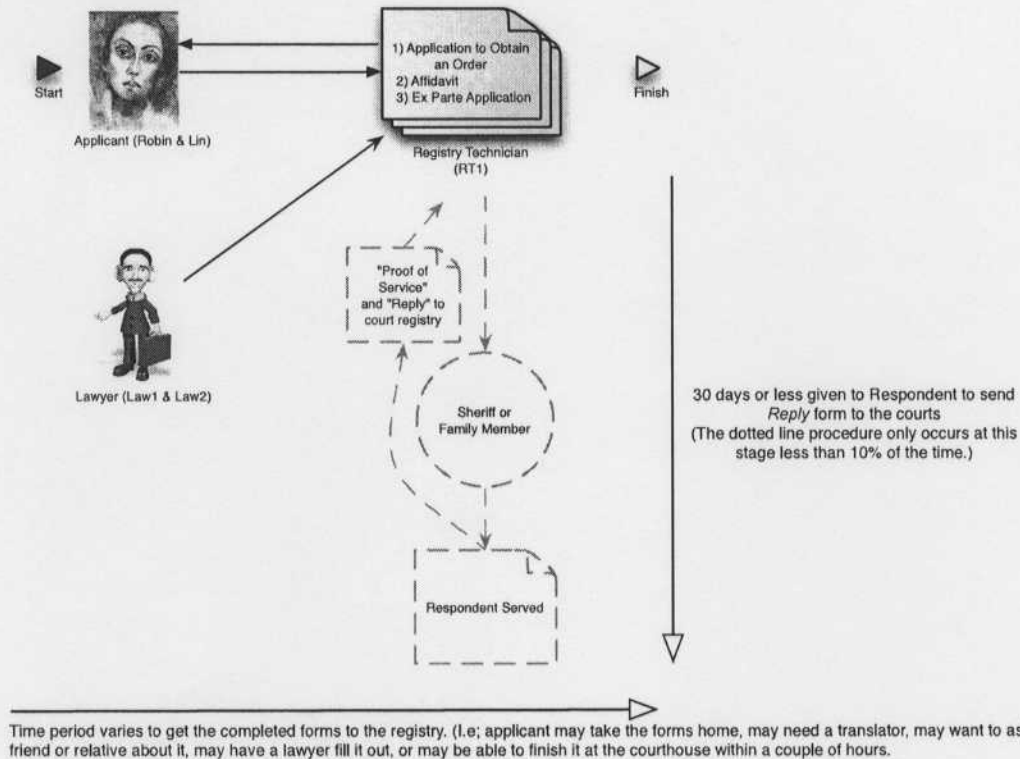
Chapter 4: Filling out the Forms

I. Introduction

This chapter concentrates on the initial stages of the restraining order application process where lived experience is transformed into a textual narrative and selected boxes on the three application forms. The first chapter section, *From Experiential Account to Case*, begins with a description about the process of filling out the forms, including interaction with registry staff at the front counter. Other types of assistance available to applicants are identified, however, while there are several sources of help, each source provides specific types of assistance in several different locations. The last chapter section, *Knowing what to Include*, explicates how applicants make sense of the application and translate their stories into a textual narrative.

Early in the application process, individuals' pleas for help lose contextual and temporal specificity as they are translated into institutionally recognizable and actionable frameworks to be managed as a case. The application forms effectively standardize experience as accounts are constructed within a ruling conceptual frame that suppresses subjectivities. While applicants have the freedom to write their narratives using their own words, this poses a great challenge for some. Without adequate assistance, many end up making uninformed decisions about what to write on the forms. Family Clerks do their best to accommodate applicants, but in their specialized roles, may only act on cases in legally or institutionally authorized ways. This restrictive scope has institutional relevance, allowing a large number of files to be managed and completed efficiently, but does not always make real life sense to applicants.

Diagram 2. Filling out the Forms



II. From Experiential Account to 'Case'

The registry prefers to have each applicant fill out all three forms, but this ideal only occurs sometimes, and is dependent on several conditions.

...[I]t really depends on what day it is, and time of day it is. People running in there at 4:00, there isn't time to fill out the forms, and the judge wants to go home. So it's like, 'oh just get on the stand and give me some evidence.' It's - yeah, I've seen it, so I know it happens. But then, other days they have people to help them fill out all the forms" (Law2 2005)

Neither applicant I interviewed filled out all three of the required forms.

Robin filled out an Affidavit, but not the Application to Obtain an Order or Ex Parte Application. She recalled:

It's funny because we didn't even know to fill out that form [Ex Parte]. After we got the order, my lawyer brought it to me and said, 'so apparently we were supposed to fill this out' (2005).

Alternatively, Lin had not seen the Ex Parte application until our interview, yet, she too was granted an Ex Parte restraining order. She filled out only the Application to Obtain an Order, but not the other two forms.

I says, 'my ex is threatening to take her out of the country; I need interim custody for my daughter - now. Get-me-in. And I says, 'can I just fill this out really quick and give it back to you?' And they're like, 'sure.' So I did that, and I was standing there, and she said, 'you're on at 9:30 on Wednesday'²⁶. And it was a Monday I went' (Lin 2005)

Lin did not initially apply for a restraining order; the judge granted an Ex Parte restraining order along with her requested interim custody. Under the legislation, judges are not permitted to grant Ex Parte *custody*, however, they may grant Ex Parte restraining orders, which automatically assign custody.

I asked RT1 and FC about the occasion of filling out only one or two components of the three part application, and both were bewildered about how incomplete applications would make it onto the Family Court List (the list of all cases to be dealt with per day for each courtroom). RT1 referred to a fourth application form, called a *Notice of Motion* that is meant to accompany all restraining order applications as well. This is the form that "gets the file into court" through assigning the matter a case number in the computer and adding it to the Family Court List (RT1 2005). The Notice of Motion was not mentioned by anyone except RT1, and neither applicant filled it out or knew about it.

²⁶ Wednesday used to be the designated "family remand day," recently changed to Thursday instead (effective September 1st, 2005)

Front Line Assistance

Just as registry technicians cannot direct applicants toward a civil or criminal path in the initial screening, they must also remain neutral at this stage. They cannot answer any legal questions or offer advice about what sorts of things applicants should include on the forms. Instead, they may clarify procedures, answer value-neutral questions about the forms, and give limited practical advice. For Example, RT1 told me "I always advise them not to have the pages overlapping 'cause it will carbonize right through" (2005). The family clerk, FC, outlines the specialized role of front counter staff:

[o]ur job is just to provide them the forms. We cannot tell them what to put on them at all...we'll provide them all the documents they need, and we say: 'it's ultimately up to the judge whether or not they'll hear this matter' (2005).

Registry clerks encourage applicants to provide lots of specific detail without revealing *what* to be specific about. When applicants ask questions like, 'should I put down that he took my purse?' or 'what do other people put down here?' RT1 responds by saying,

'it's *your* sworn document (the affidavit). I can't tell you what to put in that'...this is the difficulty with where I work - is we can't tell them what to do... And it's difficult because you get the, you know, the distraught people, and you want to help them as much as you can, but it's borderline...they start to ask legal questions and we can't--we're at a brick wall. We can't advise that way...I don't want to put words in their mouth (2005).

Without meaningful answers to their questions, applicants are left to make uninformed choices about what to write. If they do not provide enough detail about their situation, their order - if granted - may not be relevant to their situation.

I tell them 'be specific,' you know, if you- if it's the one child, make sure that child is named, um, if it's just for him not to go to the school and pick up the child on Mondays, then state that...the judge has to know that 'cause what comes out of this, is going to be in the order. Right? So if you just say, 'don't go to the school,' and you didn't want him to pick 'em up on Wednesdays, you know, that order isn't going to be um, valid, so to say (RT1 2005).

Registry clerks warn applicants that the judge may decide not to hear the application, and even if they will hear it, they might not grant an order. Both the family clerk (FC) and registry technician (RT1) emphasized several times during the interviews that 'everything' is up to the judge and no one else holds any responsibility for the outcome of the applications. Even though the judge bears all accountability, RT1 told me that her worry about being held responsible for an applicant's inappropriate course sometimes stands in her way of providing substantial assistance. She explained: "it's a tough call because you want to help them as much as you can, but you don't want them to go, 'well the clerk told me to do this' (2005).

Clerks do not actually read the applications before passing them along to a family clerk, the first processing interchange. RT1 explains,

...I don't read over these in great detail...I can't - it's not up for me to say: 'that's stupid, that's not gonna go ahead'...It's the judge that hears it and says no way, or fine (2005).

Since each court practitioner works on a small portion of application, s/he encounters each applicant for a brief period and does not have the opportunity to fully understand each applicant's circumstances and individual needs. This piecemeal work, where practitioners repeatedly observe similar difficulties, leads some front-line workers to feel annoyed with applicants, who are seen as the cause of the problem.

Quite often you do get people that they've just had a fight the night before, they've been drinking or doin' drugs. I'm - that's not fair for me to say, but, that's kind of what the 'family people' are like. That's mean but, I'm getting kind of bitter working up there I guess. So they've had their little argument, and that's the first thing they wanna do - get a restraining order (RT1 2005).

Shifting the blame away from abusive partners, and onto victim's failure to accept and accommodate assistance 'properly' is a common institutional reaction. Applicants who do not receive help readily prevent the practitioner from completing

her specialized task at that particular processing interchange. Practitioners in the registry fluctuate between understanding applicants' circumstances to blaming victims for their inability to readily accept help, because they themselves are frustrated with delays in their work or glitches in the application's progress. The registry manager (MR2) conveyed both understanding and blame:

A lot of times they are in a bind, trying to figure out money to pay for groceries to support their children and this is serious stuff....There is a lot of support for people. The biggest problem I see is that people get themselves into a 'state' and then they are less receptive to the help" (2004).

Even though "there is a lot of support for people," *some* applicants really have trouble with understanding the process and in filling out the forms. Applicants may have difficulty understanding the language, experience different levels of threat, or feel different levels of control over the application process. The problem is not that some women receive assistance 'well' and others do not. Rather, the problem is that the same level and type of assistance is available to all applicants regardless of a particular women's unique need.

Since registry technicians and family clerks can give them only very limited help, *most* applicants hand in incomplete applications or provide incorrect or contradictory information on the forms. FC stated, "it's amazing how many people don't actually know the birth date or how to spell someone's proper name. They hardly *ever* put in birth dates," and if they do write something, it is usually incorrect (2005). Birth dates and addresses are critical for court practitioners to properly identify the person to be restrained. Court orders missing key information causes major problems when they are entered into the Protection Order Registry (POR) database. RT1 speculated that such errors are made because people feel hurried.

A lot of times they're rushing, and our line-ups are long - there are ten people in a line-up at a time, and each person takes ten minutes. So you know, they're kind of rushed to fill it out, so it's often not completed (2005).

Law2 believes this problem has more to do with illiteracy than long line-ups.

A lot of the people who appear in court in these circumstances, are either not literate or semi-literate. So filling out a form like this is very challenging... People don't normally say, I can't read, or I don't read very well. Or I can't write, or I don't write very well...So that's a concern that they would be in court without someone to help with [the forms] (Law2 2005).

The registry manager (MR2) confirmed that some applicants require more assistance and different kinds of assistance than others do because individuals come from a variety of backgrounds. In describing the process of filling out the forms, MR2 fluctuated between conveying the ease and difficulty people have. When applicants lack critical information to include on the forms,

They see it as a major obstacle rather than a benefit to help them. They have varying experience with this stuff, and for some, these forms are a real challenge. Others don't have as much of a problem...People do get panicked by them [forms], but as you can see it's just fill in the blanks. We recommend they hire someone to help them fill out the forms (MR2 2004).

The application may be just "fill in the blanks" for some, but for others, it is a new and often difficult experience. Robin recalled her experience with the forms: "in normal conditions, like today, I could write an affidavit no problem. And feel confident that my point would get across clearly and objectively" (Robin 2005). However, on the day she went to the courthouse, the day after she got her 3-year-old son back from her ex-partner, her confidence and ability were hindered by overpowering emotions. Her mother helped her navigate through the courthouse. A "very kind" security guard was present, and tracked down a duty counsel appointed to youth court who just happened to be there for a half day.

I'll never forget her [duty counsel]...She called her babysitter and said 'I'm gonna be late' and took an extra half-hour to help me do [the affidavit]. I just went 'blu-blu-blu-blu-blu' and she wrote it out. Cause I was a mess. I wasn't in good shape...I couldn't even read it. There were so many tears, like to read it over it was so hard. It was just like a sheet of water" (Robin 2005).

Other Assistance

Robin said she does not know what she would have done without the duty counsel who was available and willing to help her with the forms. Duty counsel are family lawyers organized by the Legal Services Society on rotating obligation to give legal advice to those appearing in court. There are also duty counsels assigned to Provincial Family Court, however, they are only available for family matters on Thursdays; any other day of the week, the office is simply closed. Moreover, on Thursday, which is the busiest day for family court, "duty counsel could be helping twenty people that day with their court appearances, so they may only be able to give each person a few minutes of help" (FC 2005). Duty counsels do not have much time to help with filling out the application, as they are required to be in the courtroom all morning representing people in front of the judge. Law2 explains that priority is given to those who have scheduled hearings. Regardless of need,

[t]he policy is that we deal with people who have matters on the list first, and you know, these other people need to wait in the hallway until we've done the list, and then come out and help them with their paperwork (2005).

The advice that duty counsels typically offer has to do with preparing the applicant for the court appearance. They work to obtain information about applicant's circumstances and record any financial or evidentiary information to bring before the court. This consultation usually takes about 3-8 minutes with each individual, but may be up to 15 minutes. Conversations are held just outside the courtroom with anywhere from 15-25 people present. Lin's only source of help was duty counsel. She found it to be advantageous to get to the courthouse early enough to catch counsel before court began, and before greater numbers of people arrived seeking assistance.

Private lawyers are able to provide meaningful legal assistance since they are also used to operating within legal discourses. Put simply, "a lawyer will take care

of everything - all she needs to do is sign" (MR2 2004). Experienced lawyers are aware of judges' routine treatment of domestic violence cases and know what to include and omit when crafting women's lived experience into legally sufficient evidence. Lawyers work to create a written account that will 'win a good order,' and satisfy their client.

Applicants who have not received help from someone do not know, for example, that they may attach additional pages to their application to provide more detail for the narrative. Law2 emphasized the importance of doing this because Section 7 doesn't "have a lot of lines to write what's going on - at least for somebody comin' to court to get a restraining order" (Law2 2005). With years of experience and knowledge of the legislation, Law2 knows what the judge prefers in Section 7.

...very often I don't put a narrative - I put point forms, because the judge is looking down on it, and...they wanna be able to quickly see what it is. So I might, uh -- party was arrested last night -- getting out of jail some time today, um, -- he or she's a drug user, and -- associates with people who are drug users...Um, -- long history of violence -- attended the school this am and tried to take the children (2005).

A personal lawyer also may appear on behalf of the applicant so the applicant does not have to take time off work to prepare for, and appear in court. She also does not have to face her abuser in court, complete paperwork on her own, read about procedures, and arrange childcare and/or transportation to and from the courthouse. CC1 explained,

[applicants] could make six appearances just for fixing a date, or for giving a plea - things a lawyer can do for the client very easily...because a lot of [applicants] have to work and they can't take time off work for a two minute matter and sit there in the courtroom all day until the matter is called (2004).

Despite advantages a lawyer may bring, for many applicants, paying a lawyer is simply not a choice because of the enormous financial burden. "...[I]t's difficult for [applicants] because they don't want to pay a lawyer, but we're like, 'well we can't give you legal advice and I understand you don't want to hire a lawyer'" (RT1

2005). Robin struggles financially now as a result of legal bills. She contends that there were many unnecessary costs because her current order, the outcome of a series of amendments, could have been written the same way at the beginning. She expressed:

I've been frustrated with the system. I've spent so much money having... orders re-written and specified so that they would work - really work for me. I've spent tens of thousands of dollars. You know? I haven't counted it, but one day I will. I've got all my receipts (Robin 2005).

Over several years, Robin and/or her lawyer were required to go back to court to make conditions on the order more specific, or to add further conditions after her ex-husband found ways to intervene without actually violating the order. For each amendment, she would have to pay her lawyer for administrative work and the time spent going to court. It "costs a client anywhere from four to eight thousand dollars each time [they] need to go to court. Because it takes a day to get the papers ready and a day to sit in court and wait for the case to get called" (Lawl 2004), and most lawyers charge two to four thousand dollars per day.

Other sources of support for people span different locations, and offer very specific kinds of help, and few provide assistance with filling out the forms. The Victoria Separation and Divorce Centre and BC Family Justice Counselors offer help to those dealing with custody, maintenance or access issues, but cannot offer legal advice. The Greater Victoria Police Victim Services, the Spousal Assault Victim Support, and the Family Violence Project deal with criminal restraining orders, and not civil restraining orders. Transition houses and safe houses offer safe and temporary places to live, food and clothing, and counseling, but are not in a position to help with the application forms. The Need Crisis and Information line also offers support to people over the phone, and refers people to various community services. The Dispute Resolution Center does not offer mediation services to those seeking a restraining order because of power imbalance between the two parties. The Victoria

Native Friendship Centre is able to help anyone with filling out application forms, however, due to the name of the centre, they are not likely to draw non-native applicants. The Intercultural Association of Victoria offers counseling, and language translations, but they do not specifically give legal advice or help in filling out the application forms.

Knowing what to Include

Individuals either complete applications on site, or take them elsewhere. FC encourages applicants to take the forms home, "sit down and fill it out, and really think about what you're writing in here..." (2005). Unfortunately, the home is not usually a safe place at the time. Further, no matter how much time an applicant has, and how much thinking she does about what to write, if she does not know what parts of her experience are important for the judge's decision, she may still not include the 'right' things. For example, J1 indicated it is more effective to include an evidential record of what *has* happened than anticipation of what *might* happen. Feelings of threat do not add much to the application because judges need evidentiary grounds for granting an order. Law2 affirmed that applicants do not necessarily give the right information.

Some [applicants] are just fine, um, most people when they're there for a restraining order aren't. So I think it's really helpful in urgent circumstances that they have someone with them. Cause they don't know what the judge needs to know, and they don't necessarily um, give the right, or give all of the information when they're asked a question because they're intimidated by the court and being in that box, and so, um...duty counsel might um, help them tell the court what the court needs to know (Law2 2005).

Robin realized after filling out her affidavit that there are particular things the judge is looking for. Fortunately, not knowing this at the time was not very consequential because the duty counsel who put Robin's words into the textual narrative probed her to get this information. Robin identified what she now

believes is the main concern of a judge assessing a restraining order application:

"Safety of the child. And I clued into that after when I calmed down. It's about the safety of the child - as a primary - to get the judge to hear you" (Robin 2005).

Section 24 of the Family Relations Act (FRA) entitled "Best Interests of Child are Paramount" supports Robin's realization. It reads,

When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances... (Provincial Court of BC 2004)

This legislation is commonly referred to by court staff in daily work, and acts as a chief guiding principle in family law judicial decisions. Law2, aware that judges use this legislation as a chief directive to sort out what falls into "grey areas," encourages applicants to focus on their concerns for their children.

I think for the most part [judge's] are going to err on the side of protecting children...what's needed to keep them safe...So, I'm, (pause) encouraging [applicants] to feel comfortable to tell the court what your concerns are for your children's safety and how you're addressing them in addition to getting this restraining order...where there's children, you do what you can to protect them, and hope that the adults grow up sometimes, for the nuisance ones, or find ways to be safe, for the other ones that aren't nuisances (Law2 2005).

Unfortunately, as guided by this legislation, battered women are not considered as deserving of protection from violence as their children are. At another BC courthouse that FC identified, judges will not hear any restraining order applications if the conflict is 'just' between two adults (FC 2005). J1 revealed her attitude about protecting children primarily: "You know, cause you're not thinking about that individual [applicant], you're thinking about a kid, and that's all you care about. So, you know, the rest of it is all sort of peripheral nonsense" (J1 2005).

Mothers who have been victims of assault are commonly frowned upon in Provincial Family Court for exposing their children to harm and a poor family environment. If the applicant has made a formal effort to stop the violence by

contacting police or other authorities, and she writes this in section 4 of the Ex Parte Application, she stands a better chance of convincing the judge of the application's urgency. However, for J1, if there's

no back-up of anything, then it's not an emergency. 'Cause if it's really an emergency, the neighbors know, the police know, somebody knows that there's some terrible thing going on...if it's ongoing violence, the police have been involved and she's got the police reports? And then you know: ok, this is a big problem for these people (2005).

Robin learned through her experience in Family Court that her own safety concerns, without supporting evidence, were not usually enough to provoke action from the judge. She reflected, "[i]t's not enough for *me* to say, he's gonna beat me up and take my kid...that's not enough. It's gotta be an observer" (Robin 2005) that is willing to testify in court. If social workers from the Ministry of Children and Family Development have done an investigation, J1 explains, and the ministry tells a woman "to get an order of no contact or they'll apprehend the kids -- well, I'll pay attention to those. That strikes me as an emergency for that family! (laughing)" (2005). If applicants have talked to someone at the Ministry, but do not have a letter from the director,²⁷ J1 tells them: "if they haven't written you a letter, I'm not interested. If you want to bring [the director here] with you - fine. Other than that, I'm not dealing with this" (2005). Testimony from an outside source, or from someone in a 'neutral' position is very important to judges in restraining order cases.

There is a widespread understanding among civil justice practitioners that cases reported to the police are the serious ones. Law2 confirmed,

Of course the police involvement has to do with: how seriously are you taking this? Did you report this to the police? Because sometimes people come to court to get a restraining order, but they haven't taken it seriously enough to report it to the police, or you know, use the other services that are

²⁷A director is a social worker from the Ministry of Children and Family Development (MCFD) who has been delegated under Section 92 of the Child, Family and Community Service Act (CFCSA) to become involved with a family (MCFD Manager, 2005).

available to them to deal with the situation...Where there's a history of abuse, and a history of police involvement, and a history of Ministerial involvement - these are situations that, you know, it's clear that they're not situational..." (2005).

J1 remarked that if applicants do not report that authorities have been involved or notified, "they may not get into the courtroom to say anything" (2005).

There is, however, a problem with equating seriousness with reporting. Many women experiencing violence are reluctant to contact authorities even though their situation is very serious. Threatened and abused women, especially those who have experienced discrimination or mistreatment by police and other authorities, or fear reprisal from their abusers, often develop strategies to conceal the violence from others. Some are reluctant to have police involved because they fear getting arrested themselves, either for the violence, for partaking in other illegal activity, or for not cooperating with them. Lin's experience provides an example of this mistrust. Her mother called the police to have them check on her because she knew the violence had escalated, and she had not heard from her daughter for a few days. The police arrived, and began searching her apartment. Lin had given them a false name for her ex-partner, and was worried because she

didn't know what they were there for, or what they were going to do...I said, 'you don't have a right to ask my son questions, you have to go through me. I know my rights.' And she said, 'or we could just arrest you.' I said, 'go ahead. I'll be out in an hour.' I said, 'go ahead then. I'm eight months pregnant, lets go' (2005).

Lin's mistrust and reluctance to involve authorities stems from previous negative experiences. Her choices not to involve police are rational and strategic, but do not reflect the seriousness of her circumstances at all. On one afternoon when she started packing to move out, her abuser smashed a glass ashtray on his forehead. Instead of calling for help, she doctored him at home.

He took out a glass ash tray and smashed it over his head so that I would have to stay because all of a sudden there was like blood spurting out right?...well I can't leave someone like that, right? so right away, I'm like, 'ok,

well sit down, shut up, and let me fix ya.'...Soon as the bleeding was stopped, I started to like pick out all the pieces of glass out of his head. And I stitched him up. I stitched him up myself. I gave him stitches, I bandaged it all up, and then I cleaned my floor, I cleaned all my walls. I bleached everything - no blood, no nothing. And I was like - I can't believe we just did this - I can't believe *I* just did this!

JA: *You didn't want to call anyone.*

Lin: No. I didn't want any more problems. If I would have called somebody, there would have been *way* more problems. More than I was willing to deal with.

JA: *That they would think you had done it?*

Lin: Or I guess so, but either way. And plus I was thinking they were gonna take my kids away. But *no* - I can't have my kids taken away.

After Lin's abuser raked his teeth across her foot breaking the skin and several bones in her foot, she sought an alternative to seeing her own doctor for the same reasons of uncertainty and mistrust.

I didn't want to go to my doctor so I went to the CRD (Capital Health Region) to have it [foot] checked out. Cause he's got Hep C right? So I wanted to make sure I was ok. And I got tested and I was fine, but anyway. I was too scared to go to my doctor cause you never know what they're going to do about it (Lin 2005).

Robin, on the other hand, had many statements and police reports to add legitimacy to her urgent application. She knew that having incidents on record would help, and didn't have as much apprehension for being arrested, or having her child taken away, so "whenever he would do something, I would do a statement" (2005). Robin put together copies of all her statements to add to her application for submission, the next step of the application process.

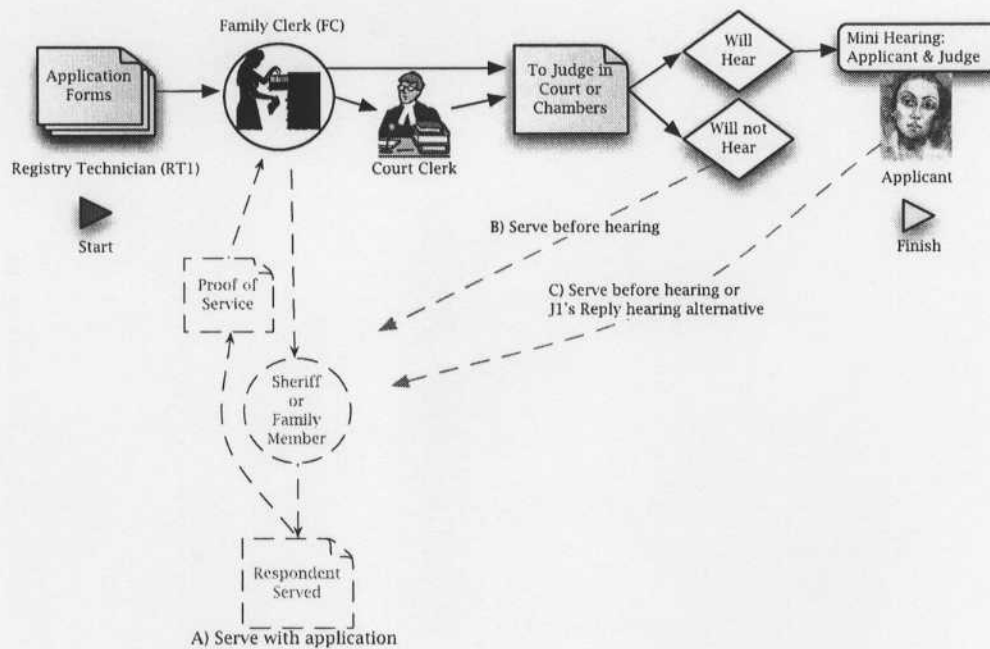
Chapter 5: Application Submission

I. Introduction

Once restraining order applications are submitted to the registry technician (RT1), another series of institutional processes is set in motion. There is little an applicant can do at this point to influence the application's course or processing time. The application changes hands between four and six times before applicants hear from anyone about it. First, the registry technician delivers the Ex Parte Applications to the family clerk, who either gives the documents to a judge directly, or via a court clerk or sheriff. The Provincial Court Judge reviews the application to determine whether it seems urgent enough to arrange a quick hearing. If an Ex Parte hearing is granted, the judge arranges a short trial in the courtroom, usually allocating about 10-15 minutes. This may occur on the same day, or within the next few days, depending on courtroom scheduling, and the judge's availability.

Drawing from Lin and Robin's lived experience and practitioner accounts, this chapter reveals disjunctures between the institutional sequences of action mainly located in the courthouse, and the everyday lives of applicants. The section entitled *Application Submission*, focuses on the movement of the application from one practitioner to another. The following section details the procedures of serving notice and receiving the Reply from the respondent. Applicant's safety is centralized and ensured during one particular point in the serving notice procedure: applicants are not permitted to serve the respondent themselves and thus, are not placed in danger if the respondent reacts immediately.

Diagram 3. Application Submission and Serving Notice



II. Application Submission

Variation between applications depends upon a number of circumstances in procedures, and is apparent at each stage of application processing. Beginning with the combination of forms applicants fill out, each application's processing follows a somewhat different course. These differences, however, have little to do with variation in applicants' everyday problems of safety, and more to do with institutional requirements. Case managing requirements include whether or not there is time to fill out all the required forms, whether or not a judge is available, or what next steps need to take place on specific days, or in a specific courtroom. For example, if an application is submitted in the morning, it has a better chance of being dealt with on that same day. If it is submitted later in the afternoon and the

judge has gone home, or if the judicial case manager²⁸ determines there will not be enough time for the judge to review it, the applicant may need to return either the next day, or a few days later. For these reasons, the sequence of each application does not always follow the clear-cut procedures and timeline as described by registry staff or as shown in *Diagram 1*. In general, CC1 laughed, "a typical day, is an atypical day...no day is ever even close to being the same...we deal with different people in the registry... different judges, different lawyers everyday. So um, you never know when things can go wrong, every day is completely unpredictable" (CC1 2004).

Applicant to Registry Technician to Family Clerk to Judge

When registry technicians receive incoming applications, they immediately pass them along to a family clerk. Family clerks conduct most of their work behind the counter preparing files for court, generating Family Court Lists (list of files to be called in each courtroom), and moving files to and from court clerks and judges in chambers. Since registry technicians work at the front counter, they are not able to physically move files around the courthouse. RT1 describes the transfer of the application paperwork to the family clerk at this first processing interchange:

I ensure that it goes to the family section - that they know about it, and then kind of after that it's out of my hands. We're front line and we're answering all these questions too, so...(2005)

Accountability for the application changes several times during this period, and practitioners are clear on when the application becomes their responsibility, and at which point that responsibility is transferred out of their hands and becomes

²⁸ Judicial case managers, also known as trial coordinators, create and modify the trial schedule for each courtroom on. They base their scheduling on how much time a hearing is anticipated to take and its relative priority. The schedule is in constant flux to maximize daily courtroom time.

'up to' someone else. FC also notes the responsibility shift when explaining the specialized roles in passing along the files.

I take it into the court, and then it's up to the court clerk to hand it off to the judge...It's up to them (clerk) to make sure the judge knows they have one, and to make sure that they have a chance to review it...if they're in the middle of something, or the judge is not going to have time to hear it, then it's up to the judicial case manager to decide if it's going to go to a different judge or different courtroom (FC 2005).

Most often, the family clerk gives the application to a court clerk who may choose to give it to the judge right away during a trial, or retain it until court stands down for a break. If an application is submitted during a time when court is not in session, such as over lunch break, family clerks usually take it into the judge's chambers so the judge may review it before court resumes. Depending on which sheriff is present, the family clerk may give the application to the sheriff (FC 2005), who then passes it along to a court clerk or the judge.

Court clerk's decisions about what to do with each application is dependent on a number of circumstances. Some clerks hold onto them until there is a break in courtroom activity. Some pass it up to the judge in the middle of a trial even though "they are not supposed to" (J1 2005). And still others decide on a case-by-case basis depending on what the present judge is known to prefer. Other factors affecting the court clerk's decision about what to do with each Ex Parte application include what time of day it is, whether the judge in attendance is 'a nice judge,' whether or not the lunch break is approaching, or how many other urgent matters are on the list already (CC1 2004). Applicants usually "have to hang around the courts for a bit because you never know what time the application is gonna go [to the judge]. Like because there's other applications being heard, they may not be heard til 3:00 and they're here at 10 in the morning" (RT1 2005).

The receiving judge must be a Provincial Court judge (as opposed to Supreme), who is not sitting in criminal court that day, or in the middle of another

trial. There are usually a few judges to choose from who are 'down early,' or already sitting in the family courtroom that day. Aside from the situational and formal criteria in selecting a judge,

...the clerks know what judges will even pay attention to them...[clerks] kind of make a judgment call about the [applicant] who's there, and if they're persuaded, then they'll try to find a judge who they think will maybe be persuaded. They don't *say* anything to the judge, but it's human nature to, if you feel for that person, you're gonna try to find someone to help them. Not someone who'll turn them away and tell them to go serve the other party...Some judges (approve) every one they're asked to make. And some won't make any at all - Some won't hear any of them, so don't even bother taking the file in there...maybe the clerk will look for the person who will do it - or *won't* do it, if they're already too busy (laughs) (J1 2005).

Hearing Decision

Initially, judges receive only the Ex Parte application form. The other two forms wait at the registry until the judge makes a decision about the hearing. As mentioned previously, the Ex Parte narrative "is the most important part of the restraining order application," (RT1 2005) because this is the only form the judge initially reviews in deciding whether or not to hear the rest of the application. Further, in the courthouse under study here, if an application surpasses the judge's initial decision to hear it, in most cases, some kind of protection order will result (FC 2005).

The first consideration on an application for an Ex Parte restraining order is why the other party cannot, or should not be served first (Judge Rae 1992:380). If "the person could not be found, or is outside of the jurisdiction, and *cannot* be served, the court has no jurisdiction to make an Ex Parte order because the ability to make that order depends upon the ability to effect service" (Ibid). If there is a reasonable reason why the other party can be served, but should not be, (the person is likely to react strongly), the application may be treated Ex Parte.

Judicial response to Ex Parte applications varies by judge, and by courthouse jurisdiction.

You could be in uh, Cache Creek, and you could get it put on the [hearing] list, or you could be in Victoria, and judge wouldn't hear it. And there's twelve of us, and three of us might hear it, and six of us might not. So it's, it's not a pure system. But it shouldn't be, cause Ex Parte orders are pretty horrible things (J1 2005).

If the particular judge is convinced that the Ex Parte application is indeed urgent enough, the family clerk puts together a new file for the case containing copies of all three application forms. S/he separates the four carbon copies of the Application to Obtain an Order and files one copy at the registry, gives the applicant her copy, and gives the sheriff both the service copy and respondent copy for serving notice. Depending on trial scheduling, and what is going on in the family courtroom that day, the applicant may be able to have the hearing on the same day, but more likely will be told to come back for the hearing on the next Thursday. Judicial case managers set family hearings for Thursdays as much as possible. Known as "Family Remand Day," Thursday is allocated for quick hearings, trial date changes, or quick agreements between parties to resolve custody, or access terms (see Chapter 6 for more on Family Remand Day).

If the judge does not feel the applicant exhibits enough urgency, she or he will simply say that it cannot be heard and give the application back to the family clerk, who then explains to the applicant that they will have to serve the other party, or in other words, file the application "proper" (J1 2005). FC estimated that over 90% of applications in the courtroom under study will be heard and some kind of protection order is granted. The other 5-10% are turned away without a hearing. An example of a narrative on an unsuccessful application read:

[My ex-partner] keeps phoning me - he's phoning me at all hours of the day and it's really bugging me. On May 9th, he took my daughter for an access visit, and he was supposed to be home at 4, but he was 40 minutes late returning her. He hasn't come to get her since, but it's just been so

unpredictable. Now, he's threatening to take our child to Kamloops where he is living now. He just got released from a mental hospital and is not very stable. (Narrative provided by CC1, 2005)

CC1 spoke with this applicant when court was down for a break. CC1 was surprised this application was not heard because after speaking to the applicant, she was convinced her circumstances were pretty threatening. J1 declined to hear the application because the applicant did not have evidence that her ex-partner would take their child to Kamloops, and he didn't pose enough of a threat because he lived out of the local vicinity. J1 said that if the father showed up in her resident city, s/he would reconsider the application. Later on, J1 reasoned that,

...an Ex Parte doesn't, you know - tells him not to phone there but, she can wait and get that order - and probably get a better order by serving him... how's an Ex Parte going to help that he was late returning [the child]? - that he can't have access? Well it's a problem, but it's not an emergency. It's not like, holy cow, these people are at risk (J1 2005).

III. Serving Notice and the Reply

Serving Notice

Regardless of whether an applicant is granted immediate protection or not, the respondent must be served with copies of the three part application and a notice to appear in court, where they have the opportunity to deliver their version of the story. Ex Parte orders do not expire, and contain the same level of protection as a 'final' restraining order. "[L]ots of files will sit for years if it's only an interim. And the parties either move off and do whatever they're doing and it never becomes an issue again, or they get older and more sensible, or the kids get older and it doesn't really matter what the court order says" (J1 2005). The order becomes 'final' once the respondent sends in a Reply, and has had the opportunity to present his position in front of the judge, but this status does not change the order's

effectiveness or strength. If the respondent is legally served and does not send a Reply and/or does not appear for the hearing and the applicant does appear, an order is made in his absence.

Judges decide on the number of days permitted for the reply by assessing the level of urgency of the application, and perceived difficulty in finding and serving the other party. Judges often pursue a course of action that to them seems a decent compromise between giving some notice to the respondent, and expediting application processing for the applicant. This compromise entails shortening the length of time in which the respondent must return the Reply from the traditional 30 days. "Some [judges] say 2 days, some say 10. 7 days is probably the average, but I often make it shorter than that - just because. I often say 3 days...7's a whole week - if the guy's *crazy* that's a long time to simmer isn't it" (J1 2005)? By shortening the time for service, judges are able to hear from both sides and the order can be finalized sooner. Most judges prefer shortened notice to no notice since the other party has equal opportunity to 'present his case.' Judge Rae wrote:

My preferred practice is to grant the restraining order and make it effective until a specific date. I will then also give directions for the service of the order...In many cases I am not satisfied that the situation is so urgent that *some* notice cannot be given before relief is granted, but that the matter is urgent enough that it ought to be expedited" (1992:381).

A widespread belief among judges and other court practitioners is that the longer time span between an applicant obtaining an Ex Parte order and the Reply hearing, the more unfair the process is for the respondent. This is because holding an interim order that legally restricts another's actions, is "just one of the things that gives somebody a bit of control" (J1 2005). Judges believe it is unfair to grant an order to the applicant, and not allow the respondent an equal 15 minute hearing when he returns the following Thursday. Respondents do not have this opportunity

because it takes months to attain a hearing date because of the exceedingly high demand for court time.

J1 provided a scenario where Ex Parte orders can lead to difficulty when they're used as a control mechanism, especially by those accustomed to using manipulative tactics in the relationship. For example,

...[i]f you're the mother and he told you a month ago that he didn't care if you move - she's gotten rid of her apartment, and she's got the moving truck, and he says, 'oh I've changed my mind and I've got an order of [interim] custody here. So what are you going to do about it?' You know? That's the sort of stuff that happens. And uh, she doesn't have a place to live, she's not going anywhere without her child, and he's got an order for custody, and you know, it's just a bad idea" (J1 2005).

In such cases, J1 pointed out, not hearing from both parties can cause troubles, as individuals are suddenly legally restricted from doing otherwise acceptable things.

While shortening the number of days permitted for service and the reply seems fairer for the respondent, the procedure still fails to account for the lived experiences of the applicant during the waiting period. There is a false assumption that shortening the number of days for giving notice for more serious cases deals more effectively with applicants' safety needs. Presumably, this is because the matter can be resolved sooner; however, what goes on in the waiting period once the respondent is served is an important safety consideration, even if this waiting period is only 3 or 5 days.

In Harrell and Smith's (1996) study of the time immediately following initiation of a restraining order application, 52% of respondents reported receiving unwanted phone calls from the respondent, 21% reported tracking or stalking, and 21% reported unwanted visits by their ex partners. Over 80% of these women reported more than one such occurrence. Reactions to being served with the application and notice to appear in court are various and the literature has documented that most reactions are not positive. For Lin, there was a "huge

reaction" from her ex-partner and while J1 believes one week is a long time for a respondent to simmer, Lin commented that it takes her ex-partner about a week to calm down. For her, it was the immediate reaction that took place during the first few days after he was served with the notice to appear that was the most threatening. J1 disclosed that there are a number of applicants that feel apprehensive or terrified of their ex partner's response after being served:

Lots of people say, I don't know what he's gonna do if I serve him. And, you know, I sort of think, that's not my problem. You know, you're the one that slept with this person (laughs). Um, and so, if [the respondent] starts acting up, then [the applicant] can come back to court and say, 'I served him and he just went ballistic, and he's really scaring me' (J1 2005).

One mechanism in the serving process with applicant's safety at the forefront is the regulation that in Provincial Family Court, applicants may not serve the papers themselves. Because of the potential danger, a peace officer, sheriff, or hired process server will serve the respondent (RT1 2005). Applicants may arrange to have a friend or relative serve the papers, but most choose to have a sheriff do it. If there is a family lawyer involved, as in Robin's case, lawyers arrange service of the papers instead. In sum, applicants are not permitted to serve the papers because of the danger, but even though "lots" of applicants fear the reaction *after* service, this portion of the procedure offers no protection.

Law1 provided an example where a respondent was located, but would not *accept* the documents he was served with. A lawyer acquaintance of hers appeared in court on behalf of a 67-year-old restraining order applicant who was in the process of leaving her husband. In this context, the respondent's right to be served overrode the applicant's right to safety.

[The judge] was quite a crotchety guy. He loved semantics...[The lawyer's] client was a little tiny woman, quite frail. The [respondent] was a great big guy, quite sturdy. And the guy was enraged because they'd been married for a long time, and how dare she leave him now. And she was out working in the garden, and he came unexpectedly and tried to choke her to death. And um, [the lawyer] applied for a restraining order. And the judge said, 'why

should I give you a restraining order - you don't say he *did* choke her - you say he *attempted* to.' Right? And poor [lawyer] is a very serious person, and also very law abiding, and sort of a matter-of-fact practical person, but she's not quick on her feet in the face of those kind of comments. And she was -- I just saw her blanch. You know, she just went absolutely white. And she didn't like - 'uh - uh - uh' and so she took a deep breath, and said, 'Well if he had succeeded, I wouldn't be here your honor.' And uh, he was just contrary...The judge said [to the applicant], 'well does this man know you're here today?' And [the applicant] said well, 'yes and no. The process server delivered the documents to him, and he happened to be working out in the garden that day, and he wouldn't take them - he wouldn't accept them'...eventually, the process server put them up against the guy's arm, so they were against him, and let go of them, and they fell to the ground. And the guy just took a scoop of dirt and buried them. Right? And so, the process server told him he had to be in court on this day, so officially he'd been served; unofficially he'd been told, but could [the applicant] say absolutely for sure that [the respondent] *knew* he was supposed to be there? No she couldn't. So the judge stood it down, which means go away for a while, and 'you make sure he knows he's supposed to be here, and you tell him to get in here right now. And we'll consider it when he gets here.' So she went and did that, and the guy came in, and he was as stupid and as belligerent to the judge as he was to anybody else, so the judge's contrariness had a focus, and she got her order (Law1 2004).

This example should not be treated as typical, but does demonstrate the kind of direct repercussions to women's safety that can result from the way the serving notice legislation is written. The judge and process server are required to adhere to the law, which specifies that to be legitimate, the documents must physically touch the respondent, and that person must be clear that they are to be in court on a particular date, at a particular time. By granting the respondent another chance to accept the notice to appear in court, the risk to the applicant's life was treated as secondary to conformity to the written law. Ironically, from a legal perspective, the closer practitioners adhere to this written law, the more just and fair they have acted, regardless of the consequences to the applicant. In the above example, serving the respondent with a notice to appear resulted in a direct threat to the applicant's life, yet the criterion that led to the granting of a restraining order was the respondent acting disrespectfully toward the judge.

This example also draws attention to how each hearing outcome depends on the idiosyncrasies of the particular judge present that day. Some judges are very particular about maintaining absolute 'fairness' to all parties by strictly adhering to the law and setting aside considerations of the immediate safety needs of the applicant. Law2 confirmed:

The outcome is very dependent on the judge. There are some judges who are really um, open to taking the thing in a different direction if they're coming to what I think is the wrong conclusion...but some of them aren't, so it really depends on the day and who the judge is (2005).

Hearing from both parties is important to court practitioners to prevent 'he-said, she-said' situations, often resulting when one individual applies for an Ex Parte order which incites the other to apply for one in response.

You know, it goes back and forth. So you never seem to have both of them in the courtroom and you get he said, she said, so -- no. Both of you serve the party, get them here, and then if they don't show up...once you have the proof of service, then it's a bit different (FC 2005)

When only the applicant is heard in court initially, J1 explained, "I don't know anything about where she's coming from. I don't know if she went out to his house and picked up the kid today, and *he* had a custody order - I know nothing" (2005). Hearing each side separately is considered an inefficient use of time; moreover, it prevents the judge from evaluating the demeanor of each individual to discern who seems to be the instigator. The hearing scheduled once the reply has been received at the registry allows the judge to examine both sides 'equally.'

The Reply

Respondents fill out and deliver the Reply form to the Family Court Registry by a deadline specified by the judge. Respondents "usually disagree with everything on there. Usually, they do want to change it, and do respond" (FC 2005). Once the registry receives the completed Reply (or the deadline has passed), a reply hearing

date is scheduled for the Thursday following the number of *clear* (whole) days notice the judge ordered to be given to both parties.

Some judges (including J1) request that the respondent also receive a copy of the court transcript detailing what happened during the Ex Parte hearing between the judge and applicant. J1's reason for this request is that it makes the applicant accountable for the claims she made in his absence. J1 recalled one respondent who came to court to contest the claims the applicant originally made. The respondent refuted,

'I-wasn't-even-in-Victoria! I have a letter from my boss. I was working in blah blah blah,' And over comes the letter. You know, and it's just her vengeance that you know, he said he was gonna come and see the kids, and he hadn't given her enough money, and she was mad about that so [she] told this story about how he's threatening to come and get her. Of course it couldn't have happened the way she said (J1 2005).

By requesting the transcript, J1 added, the respondent can be equally prepared for the reply hearing. If the "respondent reads the applicant's narrative, and it's a pile of gabooga (sic), and they come racing back into the courthouse, they know exactly what it is that's been said about them. Because other than that, they have no idea...Cause imagine how you'd feel. You know, and it's some demented person that's there telling stories that never happened" (J1 2005). If the applicant appears to be mentally ill, then the testimony of someone other than the applicant, such as the police, may be called upon to convince the court that the risk to her is real.

Judges are particularly concerned to "safeguard against the person who's using the restraining order as a vendetta. And unfortunately there are situations like that where people um, wanna get a restraining order because they know that after that, if they don't like so and so's behaviour, then they sick the police on them" (Law2 2005). The assumption that applicants use the restraining order as a vendetta, or as a tactical advantage to beat the system, is present throughout application processing beginning with the judge's first viewing of the Ex Parte

application, as described in Chapter 3. This theme continues with judicial assessments in the courtroom during the reply hearing (discussed in Chapter 6) and throughout police enforcement as in Lin's experience (discussed in Chapter 8).

A Reply Hearing Alternative

Since there is no time for actual hearings on Thursdays, the only purpose for applicants and respondents to appear on a specific Thursday is simply to request a hearing for a later date. The judge explains to the applicant and respondent that there is no time for a trial, and instructs them to go to the judicial case manager (JCM) for a hearing date. The JCM will assess how much courtroom time they will need and tries to fit the trial into the schedule. S/he might respond by telling them 'that'll be seven months down the road, cause we don't have 3 days to give you.' And so that's the unfairness of it all. Sure they can get back into the courtroom [every Thursday], but they can't get a hearing date" (J1 2005).

Law2 explained that receiving a hearing date from the court registry is deceptive because it gives the impression that the issues are going to be addressed:

... sometimes it looks like you're going to get the chance to go back to court quickly, but - not really. And sometimes when you come on the next Thursday, there's time, but most of the time there's not; the list is very long, as you know, so that's a bit distressing for [respondents]. And I think for the applicant too. Because they don't know if they're gonna walk out of court with a restraining order or without one (Law2 2005).

Law2 talked a fair bit about how unfair the practice is for the respondent. J1, also very concerned about the respondent's rights, has come up with her own method of getting around the 'unfair' time period the respondent must wait to reply and deliver his defense. If an Ex Parte application is submitted early in the day, J1 may have the sheriff phone the respondent to request that he come to the courthouse on short notice - that same day. J1 tries to arrange this as often as she can because she

feels that if she just grants the Ex Parte order without notifying the respondent, "it only makes the fire burn really hot"

Often, I'll say to her, 'where's the [respondent]?' - 'they're at work,' 'do they know you're here?' - 'Nooo' And I say to the sheriff, 'phone so-and-so at work and tell him that she's here making an application and tell him to be here at 2:00.' When he arrives, I'll tell him '[I'm] not making any order today - don't go to her house, don't do any of those things.' And usually when they've had someone here telling them that, they don't blow it...And if nothing else, he'll send someone else down saying, 'you know, he *can't* just leave work, he drives a truck and he's on his way to [Kitimat]. But he can be here on Thursday.' I say 'ok, well you tell him, don't act up in the meantime because she's here complaining' (J1 2005).

J1 notes that her use of this method depends on whether or not it would be practicable or possible to have someone summoned to court on such short notice. Sometimes the respondent is not accessible, and the sheriff cannot simply phone him at work.

Like if someone comes in and says, '-oh, my wife's been doing cocaine for 5 days, and you know, I have to go off to work next week and I can't have her looking after the kids.' 'Do you know where she is?' 'No, I haven't got a clue, she hasn't been home for 3 days.' Well then we're talking, you know, something different, so I'll listen to that...or I tell the guy 'well, wait 'til she shows up, serve her these papers, and you can come the next day' (J1 2005).

If it is not possible to summons the respondent to court the same day the applicant submits the Ex Parte, J1 still aims to provide opportunity for a reply hearing once they both return on the specified Thursday (provided they both return). She understands the importance of dealing with these matters as soon as possible and tries to facilitate a reply hearing whenever she can, even though most Thursdays do not really have enough time to. When both parties are in court,

I say to him, 'it took 15 minutes for her to get this (Ex Parte) order, you convince me in 15 minutes why it shouldn't be there.' So he talks for 15 minutes, and if I'm satisfied...I'll set it aside. Then they're both on an even playing field. Then they go off and get a trial date, and come back. But they, by then, you know, they're both in the courtroom (J1 2005).

This strategy puts both parties in 'equal' positions at least until the date of the actual restraining order hearing, which could be months away from this time.

J1 does not prioritize these short notice hearings on days other than Thursday, however, because if it's not a real emergency, it's "an inappropriate file to come in and interrupt everyone else's time that has a court date set" (J1 2005). Short notice changes in the courthouse affect how practitioners are able to get their work completed efficiently, and hence, Ex Parte hearings on days other than Thursday are generally seen as inappropriate interruptions. Of course, urgent applications are submitted on all days of the week.

Robin first arrived at the courthouse on a holiday Monday morning, when the courthouse was operating under a unique schedule. She submitted her application and was heard by a judge the same day, without having to give notice to Nathan.

I sat in court all day until a judge would see me...The only reason there was even a judge there is because um, a small claims case had held over from the Friday before, it was holiday week-end - Christmas - and the court wasn't even supposed to be open that Monday. It was Monday, December 29th, but the judge happened to have to sit to finish this small claims that had been left hanging on the Friday...It was an empty courtroom: me and my mom, and this man and this woman with their small claims situation. And as you know, that's not what a family courtroom looks like on a typical day! Um, and [the judge] asked me, do you want a RO? After I told him the story what had happened the last three weeks, culminating with [Nathan] taking my son and not returning him. And I'm like 'Yes,' yeah!

In contrast, Lin, who also arrived at the courthouse on a Monday, was instructed to return on the following Thursday for the reply hearing. Chapter 6 continues the account beginning with what goes on during reply hearings on Family Remand Day including courtroom preparation, and the work inside the courtroom of the court clerks, lawyers, sheriffs and individuals reporting their experience in front of the judge.

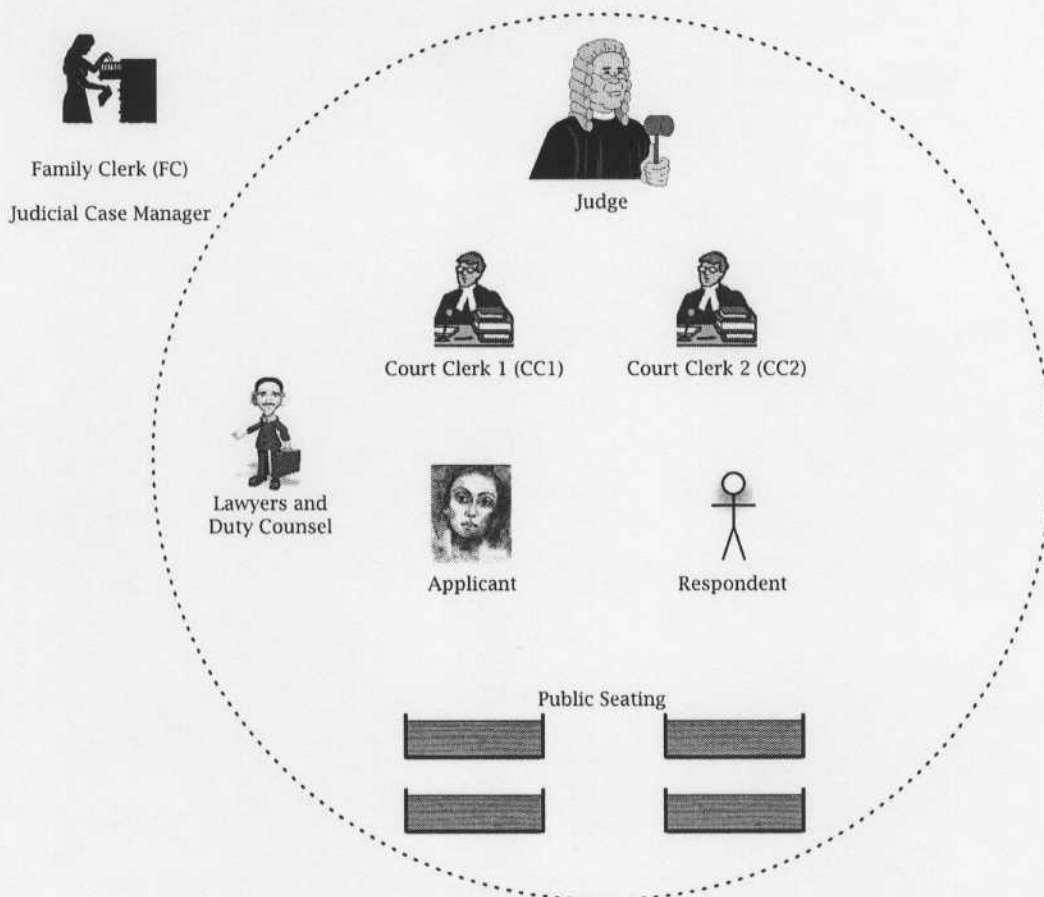
Chapter 6: Into the Courtroom

I. Introduction

Individuals who have been sent a notice to appear in court on Family Remand Day are told to arrive around 9 am to get themselves organized and speak to duty counsel before court is called into session at 9:30. After the sheriffs open the courtroom doors, individuals waiting to appear take a seat in the public area at the back of the courtroom, and wait until their case is called. Court clerks manage case files according to a priority scheme that changes throughout the morning to accommodate the high volume of cases. In general, neither the suitability of a final order, nor the satisfactory completion of a case are at the forefront of Thursday's deliberation. Success in Remand court has more to do with the quantity of matters that are addressed in some way, than resolving the issues completely.

This chapter journeys through courtroom activity on Family Remand Day. The courtroom exhibits a site of complex concerted efforts of court clerks, lawyers, judges, duty counsel, sheriffs, and judicial case managers who all contribute to moving each case forward. The concluding portions of the chapter are dedicated to the specific work of the applicant in retelling her story, and what the judge's look for in making their decisions.

Diagram 4. Coordinated Work in the Courtroom



II. Family Remand Day

Courtroom Preparation

Each morning before session, court clerks prepare the courtrooms, which are all equipped differently.

...not every clerk operates the same way, but I would set up the tape machine, um, you have to check the tape recording equipment to make sure all the microphones in the courtroom are working, flip the calendars for the judge and yourself, flip the date stamps, get log notes together, cause we take log notes throughout the day to coincide with the tapes, um, getting - some

courtrooms you get the water for the accused and the judge, some courtrooms the sheriffs get the water (CC1 2004).

The waiting area outside the courtroom on Thursday morning is quite busy with independent conversations maintaining a constant buzz. Confident lawyers and well-dressed court staff bustle around the spotless, wide hallways chatting, handing over files, and briefly interacting with the public. Individuals talk to supporting family members, look through paperwork, attend to small children, and discuss their circumstances with one of the two duty counsels present. Faces display a range of emotions; some are calm and confident, and others appear anxious, embarrassed, or frustrated, reflecting the varied level of knowledge of procedures, dress codes, and formal traditions. Most people present have filed applications for custody, guardianship and maintenance 30 days in advance, and are waiting for a hearing to deal with the application.

The people who are there for restraining orders, it's usually a bit different because for the most part people apply for restraining orders in emergency circumstances...So, um, that can be fairly challenging; people are usually quite emotionally uh, upset when they need to come to court for a restraining order (Law2 2005).

Most restraining order applicants are self-represented, but judges encourage them to speak to a duty counsel for a few minutes before appearing before the judge. From a judge's perspective, this preserves court time from having to explain procedures or redirect people. Duty counsels arrive around 8:30 or 9:00 and float around until 9:30 spending a few minutes with those that request assistance. Law2 prepares applicants for the hearing by explaining, for example,

what it means to give testimony, that individuals have the option to swear on a bible or make a solemn affirmation, that I'd be asking them questions, the answers to which I already know, but they are for the judge's benefit. That there will be a microphone there, but it doesn't amplify, it records, so you have to keep their voice up - just prepare them a little bit for what's gonna happen when they go in the courtroom (2005).

For Law2, the most challenging component of acting as duty counsel is when the applicant's safety concerns and need for a restraining order are not obvious to her. Similar to other court practitioners, duty counsel are not permitted to direct applicants, or "put words in their mouths." However, some duty counsel suggest to them conditions in which they are more likely to be granted a restraining order. These conditions may not match those on which applicants are focused. It is especially difficult standing in the busy hallway, outside the courtroom when first meeting a person who is still in shock from something that likely happened the night before (Law2 2005). Further, applicants often arrive with incomplete or disorganized paperwork.

The challenge of course being duty counsel is, there's a whole list of people who *all* want to have help in court that day, and so, often times with someone who's paperwork isn't done, or who's gonna need to have a hearing, you have to ask them to wait while you deal with people who are just there to be referred to the judicial case manager for another date, and that kind of a thing (Law2 2005).

Law2 explained that most people appearing on a Thursday are not there for urgent matters, but the few that are do not get the support they need, because "there isn't time to let them calm down, let them get to know you, explain why you're asking them the questions, and probe [for] the right responses" (Law2 2005). For an Ex Parte order, applicants need to convince the judge that their application is urgent, "and one question on the form asks if they've reported to police or other authorities. And sometimes they have called the police, but they can't tell me who they spoke to, or anything about what happened because they're still in shock about it" (Law2 2005).

The majority of hearings scheduled on Thursdays are to set, or change a hearing date, to agree to a family case conference, or to change a term or condition on an existing order. These issues, that may take 1-4 minutes, take priority over matters that will take longer, such as a 15 minute restraining order hearing. Aware

of the high volume of matters to be dealt with daily and judge's preference to accommodate 'simple' short matters, duty counsels encourage their clients outside the courtroom to agree to a specific condition, for example, a supervised custody arrangement, or a certain maintenance payment amount. This way, the resolved matter is presented to the judge simply requiring approval. Judges are pleased if counsel can save court time by encouraging parties to reach an agreement outside the courtroom, resulting in what is called a *Consent Order*.²⁹ Most of the time, priority given to cases does not take into consideration the urgency of the matter.

Jl told me that:

On a Remand Day, you don't have time for [restraining order hearings]. You have 200 things on your list, and you're going through sorting people, and if there are consent [orders], let's get the consents done so that they don't have to come back here. And you know, it's like a laundry day - you don't have trials...it could be that you got done your list early, and you could have had a trial, but you never know that ahead (2005).

Court in Session

At 9:30, two sheriffs unlock the big courtroom doors to allow the public in to find seats. Lawyers and duty counsel informally line up along the right side of the room to check in with the court clerks, and to view the Family Court List. For five or ten minutes file folders are passed around, duty counsels clarify details with their clients, court clerks respond to special requests from lawyers, and the sheriff sits near the entrance in front of a closed circuit TV monitoring four different locations in the courthouse. The courtroom is full, holding about 30-60 members of the public and about 20-30 court staff, law students, and duty counsel. A door behind the judge's stand opens to let in the judge from chambers and two escort

²⁹Consent orders are created when both parties agree to the contents of a proposed order and there is no need to have the matter heard in court. Consent orders are filed with the court registry and have the effect of any other court order (Attorney General Enforcement Matrices, 2000).

sheriffs. Conversation noise diminishes quickly, and those who are familiar with the courtroom code of conduct stand and bow toward the entering judge.

The courtroom layout presents a hierarchical organization where the judge sits on a raised platform in the centre that the rest of the room is set up to face. A second raised level in the room seats the two court clerks, one on each side and in front of the judge. To one side on ground level sit the lawyers and duty counsel. Slightly further back and on opposite sides sit the parties who have been called to the stand. Behind them sits the public. The exhibition of hierarchical power and discipline in the courtroom layout is an important organizing principle in maintaining order.

The courtroom setting itself is highly organized and its efficient functioning depends on the ongoing concerted actions of the judge, clerks (court, exhibit, transcript and other specialized clerks), sheriffs, lawyers, and the public. Outside the courtroom, there is a complex field of coordination between the aforementioned and the typists, cashiers, judicial case managers, registry clerks and the registry switchboard. File folders with applications, transcripts, clerk's notes and final court documents mediate most of the work activity, as the folders are passed back and forth to specialized practitioners for signatures, additions and further processing.

At the beginning of each session after the judge has sat down, the court clerk starts the tape recorder and passes a file up to the judge behind them, calling the first case, by saying, for example, "Calling case number 4, the matter between Tucker and Reinhart." Either one party, both parties, or lawyers in their place approach the stand in front of the judge. Informants suggest that judges find it offensive when either party fails to appear for a hearing, equating the absence with not caring. For instance, when it is the respondent who fails to appear, an order is made in his absence because "if that person doesn't come, or doesn't care, then I'm

not so disturbed about making an interim order in their absence" (J1 2005). When an applicant does not appear, the request for that order is simply dropped, and if desired, she would need to start the application again from the beginning.

Provincial Family Court, FC informed me, follows relatively casual protocol especially compared to Supreme Court. It is expected that individuals follow a basic code of conduct, but rules are not as strictly enforced as they are in the other courts, since practitioners do not expect those appearing in Family Court to be "skilled" (J1 2005), "sophisticated" (Law2 2005), or "familiar with the protocol" (CC1 2005). Most judges do not react strongly to individuals engaging in offensive behavior, and, as J1 added, most judges exercise a fair bit of patience.

I mean, at the end of the day, they can call you anything in the book, they can spit on you or do whatever. It's not gonna change what you believe is the right thing to do....I mean why shouldn't the judge be interrupted? - it's not like they know everything (laughs)...I mean you do get the last word. That should be enough, when you're losing your patience, just remember that, you get the last word, so you can take a bit here.. (J1 2005).

Since judges have the privilege of having the upper hand, and "the last word," judges do not feel they need to react heavily to adverse behavior in the courtroom, except when they feel the room is getting out of order or compromising the productive use of court time. I observed how judges react to individuals who were yelling, or arguing with their ex spouses in court, or telling too long a story. One applicant, for example, approached the stand and began to tell her story. The judge decided in the midst of her narrative that the matter was going to be too complicated to be dealt with in the few minutes Remand court could allow. The applicant spoke relatively good English, but had trouble completing some sentences quickly. The judge cut off the applicant's story by putting up one hand and said to her and the duty counsel,

I'm not prepared for a hearing today; we will have to adjourn, and schedule a family case conference instead. We will come back and finalize this"

Duty counsel: "If you've reviewed the order - "

Judge: - I haven't. I just have it in front of me. Take her in the hallway please and explain to her what a Family Case Conference is, and I hope she will be able to sign a consent order."

Duty counsel: Ok. Family Maintenance cannot enforce this order because there isn't an exact amount stated - that's why we need this order.

Judge: Well, we don't have time for a trial right now - go down to the judicial case manager and see if I have time to hear it this afternoon so the respondent doesn't have to take any more time off work. I see this matter has been adjourned twice already."

In this case, the duty counsel pointed out to the judge that the order in its current state was unenforceable by Family Maintenance, and therefore, served no useful purpose. The judge was concerned that the matter had been adjourned twice before, and felt some urgency to hear it in the afternoon if time was available. Judges' priorities are based on a variety of issues such as how long the case has gone unsettled, how urgent the concerns are, and how quickly a matter is anticipated to take. Court clerks, lawyers, and judicial case managers, with their own responsibilities and pressures to get their portion of the work done, have an assortment of priorities as well.

Prioritizing and Calling Cases

Even though cases, or 'matters' are printed in a numerical sequence on the Family Court List, court clerks rarely call them in that order because of the many issues and pressures involved in prioritizing each.

The files are called based on which counselor's there, like if there's a federal counsel there; if there's any pressing urgent need for a file to be called first it will be. Usually the people who are self-represented who don't have counsel are put to the back of the list...lawyers usually go first. It used to be that the senior counsels were called before other counsel - doesn't always work that way now. Whoever checks in first, their files get put in that order...In-custody's also have priority because the sheriffs want to move them back to the jail (CC1 2004).

Courtroom scheduling during the week remains flexible to accommodate unpredictable circumstances; for instance, if a trial takes longer than planned, or someone is arrested and needs to be given a bail hearing that day. The primary goal in this accommodation, organized by judicial case managers is to get as many matters dealt with as possible each day.

Things can be moved. If your court is slow, then the trial coordinators may move something else into your courtroom that would take the rest of the day, or move a number of matters in, depending on how busy the other courtrooms are just to get all the matters dealt with (CC1 2004).

Court clerks prioritize and coordinate their work with sheriffs as well. If the respondent scheduled to appear is in custody, clerks need to find this out either from the sheriff or from the Family Court list. Individuals who are in custody require another sheriff to escort them from the holding cell to the courtroom, and hence, special arrangements must be made before the clerk calls the matter.

The Record of Proceedings [Family Court List] should show if someone's in custody, but if they have a number of different files, they may be in custody on one file, but *not* in custody on the other, which means they *are* in custody, but you're not going to know that from looking at the file so it's a good idea to ask the sheriff...(CC1 2004).

Court clerks respond to requests from the lawyers, judges, trial coordinators and sheriffs, and use their discretion throughout the morning about which files to call. Court clerks always keep track of who is in the courtroom to make sure they do not call a matter when a lawyer or duty counsel has just stepped outside the room "because the judge will just 'stand it down' and it would be a waste of time. Or they'd have that person paged and there's no reason for it, because there may be other matters that can be called" (CC1 2004). If an Ex Parte application is submitted first thing in the morning, the clerk will have an easier time fitting it into the schedule for the day. However, if an Ex Parte is submitted mid-morning, it may pose a greater challenge to a clerk to fit it in before court stands down for lunch from 12:30-2:00.

Court clerks quickly accommodate judge's or judicial case manager's decisions made throughout the day to hold a trial not on the list, adjourn and reschedule, or add new matters to the list. CC1 reflected on the shuffling and prioritizing of files throughout the day as one of the most challenging aspects of her work. This is because "everyone wants their special circumstances accommodated. [Lawyers] can be manipulative and pretty forceful about it" (CC1 2004). They take advantage of the lack of fixed order by saying to the clerks for example, 'please call my two files first because I have to be in Supreme Court by 10:30 today,' or, 'can you hold onto that file until I get back around 11?' Some requests can be more easily accommodated than others. For example, "if the respondent's lawyer has to be somewhere else, and [the applicant's] lawyer wants the file called right away, you can't always coordinate that. It's just a matter of coordinating" (CC1 2004).

Duty counsel, private lawyers, and individuals waiting to appear step in and out of the courtroom as they wait to hear their file called. Some parties may be called right at 9:30, when court begins, and others may have to wait until after the mid-morning break (around 11:00 or 11:30). On occasion, individuals miss the calling of their matter if they are outside the courtroom, or have left the premises temporarily. Sheriffs may page people to return to the courtroom, but this is not always successful, and it is up to the judge to decide whether or not to bother paging people.

Often cases are called to the stand a couple of times throughout the morning, because the matter does not get completely dealt with the first time, and needs to be revisited. For example, a matter may be called with both parties present who cannot agree on an exchange arrangement for access visits to a child. The judge may order that they talk to duty counsel and will recall the matter once they

have worked something out in the hallway. Settling part of a case is considered a success for Remand court, even though the issues have not been completely or adequately resolved. If the issues are not resolved in the morning, they will have to return the following Thursday because child protection remand court begins Thursday afternoons.

As cases are called, the lawyers or duty counsel assigned to them push to get the orders finalized by arguing its urgency. For example, an urgent matter was brought to the court one Thursday after an Ex Parte order was granted on a Monday afternoon. A condition on the order stipulated that the party restrained could not be within a one kilometer radius of the protected party's residence. The respondent actually lived just inside this radius, so effectively, the order legally prevented him from going home. The radius needed to be more confined before the respondent could go home. This matter took priority over others and the lawyer was sure to point this out immediately to the judge.

Most lawyers are attentive to those issues that judges feel are a priority and know how to push certain cases ahead quickly.

The thing with trying to get something on really quick, is that you can't use up much court time. If it looks like it's gonna be any length of time, [judges] just won't do it. So you have to show a really serious reason, and the more independent the witness, the more likely you are to get them to hear it. So if it's just the wife who wants to complain about her husband - not likely to get it. So can you see how much it's a matter of human nature? And using the rules to make a judge feel comfortable in considering your request... [Lawyers] who just like to talk, or appear in court don't necessarily develop the ability to work with the rules like that (Law1 2004).

Law1 further explained that to maintain the status of a reasonable lawyer in the eyes of the judge, and of the public, it is important to complete cases in a timely fashion and avoid being too pushy for less urgent issues. She provided an example where she was assisting one applicant who was angry that her ex-husband was five minutes late picking up their child for an access visit. Law1 knew that to focus on

the issue that he was five minutes late would not benefit either of them, and explained this to the applicant:

You can't afford it, and I can't afford it, because my professional reputation rides on how sensible I appear to the court. And how well I do for *you* depends on how sensible I've been for the last two or three years [in other cases]. So I'm not going to squander other clients' rights to a good order because you're black and white on five minutes. What's five minutes? (2004).

Law1 also stressed the importance of showing the judge that you have respected basic court proceedings as well as individuals' legal rights, especially those of individuals they are not representing. If lawyers add to their Ex Parte requests provisions like, "to have the case reviewed in two weeks, or a month," the judge is *way* more willing to give it to you, because you're still honoring the fact that he's [respondent] entitled to be told, and he's entitled to defend himself [at the reply hearing]" (2004).

Some practitioners believe lawyers hinder applicants' chances in getting a restraining order. One duty counsel revealed that "it's easiest to get a restraining order if you are a woman, not represented, and go through Ex Parte as opposed to the 30 day service [procedure]" (Law3 2005). Her reasons for this rationale were that first, when female applicants are not represented, judges feel more sympathy because applicants appear to have less support, and probably cannot afford a lawyer. J1 described self-represented applicants that appear in court.

Here, people just come and cry, and look really sad, and it's hard to really turn them away. And, they're often really poor and it's not like they can just get in the car and go somewhere else. They don't have a car; they don't have anywhere to go. They don't - they couldn't go stay at a hotel, you know, any of those things (J1 2005).

Second, if applicants do not express urgency and apply for an Ex Parte order, "judges wonder why they need a restraining order because nothing's happened in two months, or whatever. They wonder how they can they wait so long for protection if there is a real threat, and [they] often don't grant these" (Law3 2005).

On the one hand, Ex Parte applications are in principle reserved for only very urgent matters and most judges feel they "make too many of these orders" (J1 2005). Yet restraining orders that follow the encouraged 'lengthy procedure' are often not granted because judges assume there is no real threat since an applicant is able to wait so long to obtain one.

Reporting Experiential Accounts in Court

All individuals seeking restraining orders convey their experience on paper in their application, speak about it in front of the judge and a room full of strangers, and usually again in front of their abuser. There are few protective measures at the courthouse for applicants who feel reluctant to face their abusers in court. Consequently, some may decide not to go through with the application.

As Lewis et al., point out,

Few of us would choose to discuss with strangers, in formal and often intimidating settings, the intricacies of our intimate lives; this reluctance is magnified when the consequences of such action could be not just embarrassment, but violent reprisals on oneself and/or one's family (2004:220).

Law1, who has had years of experience dealing with abused women's fear of disclosing their experience in such settings, depicted the scenario of those who first come to her to initiate the application process. Individuals arrive at the office, and Law1 prompts them to tell their story as best they are able.

And right in there you already have some real problems because women who have been dominated or subjugated a lot, find it very difficult to tell you *anything* about what their husband has done. Cause they are totally, um, conditioned to keep it absolutely private. So they say, well, I want uh, I think I want a restraining order. And you say 'why, like for what? what did he do?' And um, and often you get a response that goes, 'well, I can't really tell you.' Or, 'he wont let me tell you.' Then you have to find ways to get out of them what happened. Cause without that - that's the evidence. Right? You can't go to court and say, 'she wants a RO.' 'Why?' 'She doesn't know' (Law1 2004).

Some applicants are less fearful than others to appear in front of their ex partners. Robin was quite afraid when she first appeared in court, but has become more comfortable over time. She recalled her first time inside the courtroom: "It was definitely anxiety provoking. I remember I was thinking I had to control my voice from shaking" (Robin 2005). When reflecting on facing [Nathan] in court now, she answered that she is not fearful anymore.

No, [I'm not], I mean, he needs to hear it. He needs to hear how ludicrous it sounds. And you know, I've been in the courtroom so many times now, it doesn't bother me...I feel pretty confident. I'm an articulate person, and I can push to get what I need (Robin 2005).

FC told me that there are not many fearful individuals seeking restraining orders in Provincial Court. There is a device available for children testifying in court where a one-way screen protects the individual behind from being seen, but they are not used in Family Court.

I've seen [the screens] when it's more of a criminal matter?...if there's concern, there's sheriffs always around. See, it's her application, and she has to be somehow (pause) - I could see more that being, on a criminal case with victims - not that these aren't, well victims of that circumstance, but it's usually, hasn't escalated (pause) if they're in Provincial Family Court (2005)

When I asked J1 if there are times when applicants are fearful to appear in front of their ex partners she replied,

Oh sure. But I say, 'well that's why we have sheriffs.' And uh, you can't - she can't hide from that process. I mean, if you can't manage your own family and you're asking us for help, you can't tell us *how* we get to help"

Lin, was fearful and asked for protection from her abuser at the courthouse before one of her hearings to amend a condition on her existing order. The sheriffs arranged for her to report to them as soon as she arrived and escorted her to the courtroom.

So I hung out with the sheriffs...I was there, oh my god, from like 1:00-4:30 in the fricken courthouse...And then, buddy showed up with his entourage of friends, cause where I was sitting I could see him reflected in the doors. There's me sitting by myself, with my envelope and my little purse. Oh yeah, it was a great time (Lin 2005).

Lin's case was called at 10:00, but the judge realized she had not filled out an Affidavit and stood it down. Lin recalled,

I didn't know I needed an affidavit! They just put me on the stand and asked me question after question after question...And maybe it was because they know my ex so well...[from criminal court] And even the judge said that day - 'why do these people not know - why are they not informed that they need an affidavit?' So he was mad at the court clerks because they don't explain anything. They just give you the papers right? (Lin 2005)

After the mid-morning break at 11:30, two and a half hours after Lin arrived at the courthouse, her case was recalled. She had finished filling out the Affidavit, but the judge decided he did not need to refer to it, and would rather hear her on the witness stand. Counsel solicited the retelling of Lin's narrative by asking the first question.³⁰

Ms. [Koh], please explain to the court what happened on Saturday, April 16th.

Lin: On Saturday, I was on my way to work, I had arranged that [her ex-partner] would baby-sit our daughter. He came down the sidewalk yelling and screaming because he wanted money. He was threatening to charge me with abandonment and take our daughter out of the country. It turned into a big loud fight on the street until someone called the police. We were in the police station for several hours. I have a no contact order through his probation, but the current order is not enforceable.

(The judge glanced at duty counsel who handed a copy of his probation order to the judge, who then reviewed it).

Judge: The probation order was made 3 years ago - criminal harassment, threats to bodily harm, and a robbery at [a downtown location].

The judge clarified what the children's current names are, when they were born, and where they reside. He then asked a few more questions about her apartment, the elevator, and where she currently works, and the case was finished up with the judge's order:

Judge: So there will be a restraining order with no contact with herself and the two children, will not annoy and harass. Not to attend the 2nd floor of [her residence address], and specifically, [her apartment number]. Must not attend [place of employment] located at [address], and put in the police enforcement clause referring to all peace officers, and I guess RCMP too, but I think they are all peace officers anyway. I will not provide any access - he can do this on court order, and apply to set this aside on 7 days notice.

³⁰ This dialogue was recorded during the observation of Lin's Ex Parte hearing, 2005

Interestingly, this order was granted based on a single incident. However, having interviewed this particular applicant, I am aware of a much longer and more serious history of violent events. Some of this information might be recorded in the file in front of a judge, but he or she does not usually have time to refer to previous documentation.

Even though a restraining order was granted to Lin, not all of the unresolved matters were addressed during this quick remand hearing, and Lin and her ex had to return to court a couple weeks later. After the second quick hearing, a condition change was made to the order, but there was still a time gap in his access to the shared child. Lin and her ex-partner were instructed to go together to the judicial case manager's office to get a date set for a third hearing. Lin recalled: "We had to go there together - we have a restraining order, but we had to go to the JCM together! Yeah, figure that one out. I wasn't too happy about that" (Lin 2005). While Lin was provided a safe place to wait with the sheriffs and an escort to the courtroom at the time of her Ex Parte hearing, her safety was disregarded once this hearing was over. These actions diminish the protection order's worth and jeopardizes the abused woman's immediate safety.

Judicial Decision-Making: Determining Severity

Judges need to determine which applications are very serious, serious but not urgent enough to proceed without notifying the other party, or not serious enough to grant protection at all.

[Judges] are looking for the difference between the person who's just situationally upset-either says or does something stupid-which we see a fair amount of in family law...there's a lot of people who have threatened to kill one another; they don't really mean it - they're not - it's a situational thing? And there are people who do silly things like, you know, start a bonfire with people's underwear on their front lawn you know, it's - it's a one off kind of thing, that, just a bad reaction to the separation...(Law2 2005)

What people say during the hearing, and what counsel encourages them to say significantly affects the outcome of the order. For example, during another quick Ex Parte hearing, a male applicant expressed fear that his three sons would be held by their mother in Vancouver following an access visit. He added a detail about his children's emotions, after which the judge instantly discontinued the mother's right to access their children.³¹

Judge: Based on your evidence, I am convinced there should be an interim custody order on your behalf. She should continue to have access, maintaining the current arrangement with dropping them off at the ferry.

Applicant: Your honor, I'm worried she'll try to manipulate them and get them to come back and live with her again. When they come back, it takes them three or four days to settle down emotionally. Especially my six year old.

Judge: Oh, I didn't know that. Ok. I will not provide any access then at this point. The sheriff will serve her at her place of employment since that's the only address he has.

In the event that the applicant failed to add the extra detail at the end of the five minute hearing, the respondent would have continued to have access to the children every second weekend. Repercussions with this vary with each circumstance, but for some cases, continued access to an abusive parent can be very consequential. This is especially a concern after the application process has begun and emotional reactions toward the applicant and/or the children are unpredictable.

Without dismissing the varying degrees of seriousness across all applications, my observations suggest that Family Court cases appear to fall into two general threat levels. Some families use the court system as a legitimate means of managing difficult familial issues. This includes applications filed as a "vendetta" (Law2 2005) against the other as a means to control access to the children, to secure an increase in maintenance payments (J1 2005), or to have the legal option to phone the police if something undesirable, yet probably not life threatening were to occur

³¹ This dialogue was recorded during a courtroom observation in April, 2005

(Law2 2005). In other cases applicants are under grave threat having undergone severe violence for months or years. Sometimes a social worker has instructed them to get a restraining order, with the threat of having their children taken away (Law2 2005). In such cases there is great pressure to obtain a restraining order. Some of the criminal justice practitioners I interviewed also distinguished between two 'types' of violence that they see in the justice system:

There are some people that have a single incident in the course of a long relationship, where suddenly things are way out of hand for everybody - and you get them into court and that subdues them. Because they're basically law abiders who've had one chaotic event. But there's a whole lot of people who have authority personalities that are anti-social, or authority- um...what they live to do is to defy authority. So once you pick them up, they're more likely to do even more...for some people, it just aggravates them and they become worse (Law1 2004).

Despite the growing awareness that violence traverses all demographic variables and is not restricted to those with mental illness, there still exists a desire to 'find the sociopath' in restraining order hearings. Judges look for indicators that evidence mental instability of the abuser. "Like if you've got a sociopath, a psychopath, anti-social personality, aggressive personality, alcoholic, drug user - those are the groups. And any other wacky, abnormal behavior" (Law2 2005). Since the safety of the child is the main concern, a father with these characteristics poses enough of a threat to restrict his access to the child.

For J1, it is the overall impression from the narrative and testimony, rather than specific criteria that she bases her decisions on. It is a "gut reaction lots of times. If something doesn't sit right - they don't answer the question forthright, or, you know...a lot of it's a gut instinct about whether it's sleezy or not. You know? 'cause there's a lot of sleezy stuff that goes on" (J1 2005). "Hot spots" identified by several interview respondents were whether the respondent has any connections to illegal drugs or associations with criminals, signs of mental instability, child neglect, or exhibits any other

undesirable behaviour in front of the children. Pushing and shoving, spitting, um, driving a vehicle into somebody else's, um breaking down doors. And damage to property is like - *whoa* - to the establishment right? Whereas verbal violence to a woman, um, didn't used to be such a big deal (Law1 2004).

Law1 indicates here that threats to social order, or the 'establishment' may be better able to convince the judge of wrongdoing than threats to a partner, unless it is in front of the children.

The following passage is a recount from Robin's memory of what she put down in her affidavit and what she told the judge in court in order to get her Ex Parte restraining order. I have highlighted passages that reveal examples of criteria or issues that judges look for in an application. The passages emphasized are not meant to be considered in isolation, since the judge hears the whole story in court and it is the overall impression that leads to the denial or granting of an order.

He's trapped me in a hospital parking lot, naked in his hospital gown, his butt hangin out. Chased me in the hospital, but, it was a November holiday, the long week-end...There was no security around, no front desk staff, all the security was in emergency, I had a diaper bag, and I was running with [Sam] through the hospital, I assumed there'd be a security guard at the front door - there wasn't, so I figured I'll just get to my car, cause he's limping - he's had back surgery. You know, that didn't stop him, he blocked my car, and I couldn't get out of the parking lot. People are stopped watching. And I'm just begging him: "don't do this in front of the baby, don't do this in front of the baby, don't do this in front of the baby." Until he finally slammed the passenger car door, and got out of the way...I should've gone right to emergency. I should've just kept on trying to find someone. And I didn't. I thought I could outrun him. Cause he just had surgery! But when you're dealing with a, I believe a psychotic individual. I think he's a sociopath. I think he definitely has um major, mental health isn't even the word to use anymore...And I've had a psychologist tell me that he's a sociopath...He was calling me incessively...But then I started '*57ing' so there were phone records...Um, he'd throw stuff up at the window, um, he followed me in his car, um, one time, I involved the police because he tried to take Sam out of here. And they came...He told me many times that he had a history with the Hell's Angels and that he had special permission to get out. Um, he got involved in coke...I had absolutely no idea he had this other life going on. Absolutely no idea. When I first met him, he had said that he had a problem with coke, he was with the Angels, just an associate, but he had gotten out...then he got really nasty - really nasty for about three weeks, and then wouldn't give - every week wouldn't give Sam back. And then finally kept him that week of x-mas. And I just said: 'I'm done. I'm done.' And then he dropped out of the [narcotics help] group that he claimed he was in...His

house was an absolute pit. You know, he's the kind of guy that once a month, he'd do a big huge clean. That wasn't even happening. It was disgusting - maggots in the sink, flies everywhere, the garbage on the balcony piled up high. I couldn't believe the landlord hadn't said anything...Um, and that's not like him. Normally garbage doesn't sit around. That's the one thing he's gonna do...he was sleeping in more, not going to work, um, I'd go to drop Sam off at the arranged time, and he'd be still in bed. You know, 5:00 at night. Um, he started being reactive towards me, he was doing really well with self-monitoring his anger management, up until that summer then he started swearing at me in front of Sam. 'I'm sick of this fucking shit,' just out of the blue. Sam's care was going down the tubes too. Nathan was always good with nutrition, and teeth brushing, hygiene, we were both on the same page. I think that's why we could co-parent so well. And uh, Sam's nutrition went down the tubes, you know KD every day, fruit leathers, just cookies for breakfast, you know, it's just not good...And in the courtroom, I mean he has to manage his own pain, and he's self administering morphine. Yeah, he was sitting there [in the courtroom] injecting himself with morphine (Robin 2005)

Similar to police officers recognizing repeat offenders, judges get used to seeing the same people in family and in criminal court, and this informs their overall impression (Law2 2005). Both Lin and Robin's ex-partners are well known to judges who recognize them from criminal court appearances. Lin remembers the words of one judge who looked at her abuser and said, "I don't want to see, or hear of your name for the next 30 days. I'm sick of seeing your name on these" (2005). Lin and Robin both expressed that this negative reputation helped their cases because the judges were 'disgusted' with their ex partners who had been 'red-flagged' in the courts.

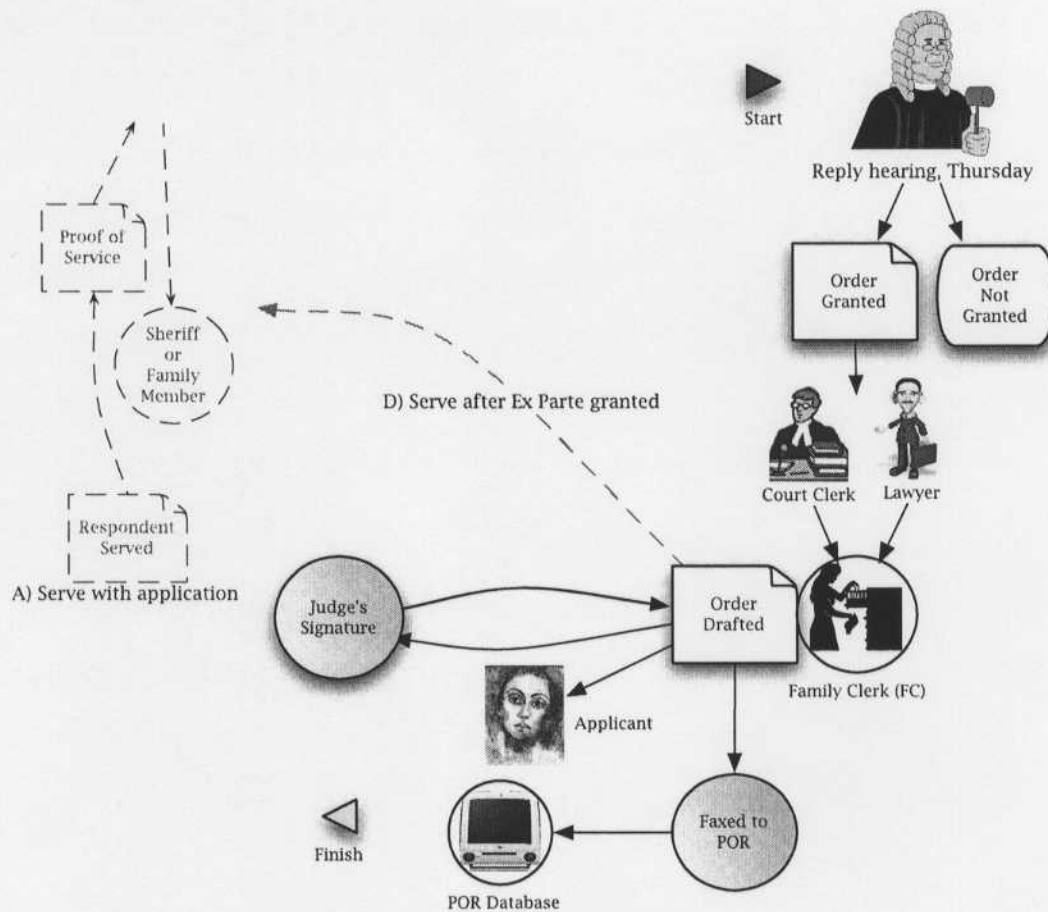
My lawyer is good. He backed [Nathan] into a corner and he had to admit he had a problem. Yeah, he got him to admit to the addiction. And that changed everything. Now he's red-flagged, or whatever they call it, and he's lost all credibility in the courts. That's why I got such a good order (Robin 2005).

Chapter 7: Court Order Granting

I. Introduction

While judges' articulate which clauses and conditions each order should contain, one of the court clerks adds her/his own log notes to the application file, and passes it back to the family clerk. The court clerk's handwritten notes specify the judicial decision, names of protected children, parties' addresses and all other details pertinent to the forthcoming court order. Family clerks use a court order template and the details recorded in the court clerk's notes to draft each order. Completed court orders are faxed to the Protection Order Registry (POR) so that POR clerks may enter the orders into their province-wide database.

The work of the family clerks in drafting final orders is explicated in this chapter's main section, *Court Order Issuance*, and is illustrated by an example of a restraining order issued by the courthouse under study (Figure 4). The following section focuses on the procedures family clerks carry out to fax drafted orders to the POR. Receiving POR clerks continually enter incoming order details into the provincial database. The section *Subsequent Hearings to Amend Orders* has to do with applicants' necessary return to the courthouse to clarify, and re-word the court order that either no longer fits their needs, fails to provide certain protection, or contains errors.

Diagram 5. Court Order Granting

II. Court Order Issuance

Order Granting

As soon as the judge granted me the restraining order, I was so happy. I was like, oh right on, I don't get bugged, no more threats, no more nothing, you know?..I've got help with this now. I can - I don't have to do it by myself anymore. So now, I don't have to run anymore. Or if I do, it's like the one time run where I can run to the nearest phone, I can get him arrested, and I can get him to stay away from us. Because most of the time, it's just verbal. But you don't know when it's gonna become physical - you just don't know. And that's the scariest part (Lin 2005).

For Lin, the relief that accompanied her Ex Parte restraining order was substantial, but she still kept in mind that the order was "just a piece of paper." Before hearing from the judge, she was unclear about whether or not the violence was her fault. "[A]t first I thought it was just me, like I was doing somethin' wrong? Like I was treating him in a way that I should not be, right? and I'm like, no, no wait a second here, I'm treating him as fair as I possibly can" (Lin 2005). The granting of the order served as an important reassurance to her that the violence she had been enduring was unacceptable and she had a right to be free from violence.

Drafting the Order

Court orders are verbatim versions of what the judge says in court. In issuing the order, the judge selects from a standard set of clauses, amending, or creating additional conditions if necessary.

[W]e always have the: 'do not enter any residence where the applicant or the child reside,' and um, 'not to have any communication, except by court order.' And so they're just basically standard clauses...I try not to make them particularly complicated (J1 2005).

Family clerks begin with a court order template and, with the court clerk's notes and the standard clause "cheat sheets" at their desks, fill in the parties' identifying information and addresses, the judge's name, the courtroom number, and the order's conditions. If clerks are unclear about what the order should say, they are supposed to get clarification from the judge or the court clerk who recorded the notes. The court clerks "are liable for a lot of the things that go on - the registry clerk can't just change things on the orders. They have to go through us because we were actually *there* and we have to sign and be responsible for everything that we are passing along from court" (CC1).

The original applicant's narrative is not included in the order drafted, but instead remains on file at the registry. The experiential account is separated from what is now more important: the court order. Being *there*, as CC1 recounted, now refers to the court clerk who was there for the hearing, not the abused woman who is there for the violence.

The family clerks feel as responsible as the court clerk for the drafted order and review and proofread the order carefully.

We check the names, the date of birth of the kids um, like we're proofreading - before anything gets to the judge, um, we've gone thru and checked spelling, um, we've made sure the names and birthdates are accurate then we take it to the judge for signature. Then the judge reads it. And if they go, 'no that's not what I meant' - you know, they'll make the changes, and we'll go fix it and bring it back (FC 2005).

The drafted order will go back and forth for amendments and clarification until it is approved by the judge. Family clerks sometimes bring the drafted order into the courtroom to have a judge sign it while in the middle of a trial.

...once it's typed, [judges] look for a little check mark to make sure we've checked it, and you know, they read through it, and sign it right there, cause they know we're usually - there's a big panic to get it typed and entered and off to POR. Like you'd never leave an order signed and not faxed to POR. Like, either you're faxing a notice or an order before the end of the day (FC 2005).

Family clerks draft all court orders for applicants who are self-represented, or represented by duty counsel. When there is a 'counsel on record' (a private lawyer), representing the applicant, the lawyer would draft the order instead. Since the order is officially in effect as soon as the judge articulates it, it needs to be put in writing as soon as possible. A directive in the registry stipulates that each restraining order be typed and signed within one hour of its granting. This is not always possible, especially when there is a counsel on record, who often takes longer to complete the order. Judges are aware of the latter problem and, if

circumstances are such as to require the order to be completed promptly, they may order the registry to draft it.

The *Rules of Court* book "sets out all the forms and how things have to look...there are sort of standard wordings, but the lawyer drafts it how they want it" (Law1 2004). It may take up to a couple of months before the registry receives the completed order from a lawyer. Once the registry does receive the order, it may contain spelling errors or inaccuracies that family clerks correct and return to the lawyer for them to complete. Further, since the order represents the lawyer's "*interpretation* of what the judge said, there are often disagreements about what the drafted order is meant to say" (Law1 2004). Once it reaches this unsettled point, most lawyers relinquish - but some do not - in which case, they would be required to schedule another motion to settle the order. To settle it,

[y]ou take the court clerk's notes in front of the Master, a slightly lower level than a judge, and present what each lawyer thinks the order is supposed to say. If the Master can decide it, he says, 'no this is what it is,..' and if he can't decide it, he sends you back to the judge who originally ordered it" (Ibid).

To deal with time delays for cases where private lawyers are involved, family clerks fax a *Notice of Restraining Order* to POR instead, to stand in for the 'true copy,' that will eventually replace it. The notice contains the same information that the true copy will include. This practice is a way of meeting the directive to have the order faxed to POR within an hour of granting in court. The Protection Order Registry can then refer to the temporary order with all of the same terms and conditions. With different people finalizing the order at different times, it is important that the clerks are clear about who is drafting the order to make sure it gets done (FC 2005).

Figure 4: Ex Parte Restraining Order Example³²**ORDER**

Court File No: F13194
 Court Location: [city]

In the Provincial Court of British Columbia

In the case between:

JANE DOE

And

JOHN DOE
07 SEP 1970

BEFORE THE HONOURABLE JUDGE JONES) Wednesday, the 6th day
) of April, 2005

THIS MATTER coming on for hearing at [city], British Columbia on April 6, 2005;

Persons appearing: JANE DOE Duty Counsel: T. Wilson

Interim Order Final Order By Consent Ex Parte

UPON THE COURT BEING ADVISED that the name and birthdate of the child is:

[CHILD NAME]	March 29, 2004
[CHILD TWO NAME]	December 17, 1996

THIS COURT ORDERS that JANE DOE shall have interim custody of the said child [CHILD NAME]³³;

THIS COURT FURTHER ORDERS that JOHN DOE shall not attend to the 2nd Floor of [applicant's apartment address] [city], British Columbia and specifically #111 1111 [applicant's specific address] [city], BC;

THIS COURT FURTHER ORDERS that JOHN DOE shall not attend to JANE DOE's place of employment of the [] located at [] city, British Columbia;

³² All identifying information has been altered, or omitted.

³³ The second child listed on the order is not a shared child between the parties.

THIS COURT FURTHER ORDERS that JOHN DOE shall not make contact or endeavour to make contact with or otherwise interfere with either JANE DOE or the said children;

THIS COURT FURTHER ORDERS that JOHN DOE shall be restrained from molesting, annoying, harassing, communicating or attempting to molest, annoy, harass or communicate with JANE DOE or the said children;

THIS COURT FURTHER ORDERS that Peace Officers including Members of the Royal Canadian Mounted Police are directed to assist in enforcing the terms of this Order;

THIS COURT FURTHER ORDERS that JOHN DOE shall have liberty to apply to set aside or change this Order upon giving JANE DOE seven (7) days clear notice thereof;

THIS COURT FURTHER ORDERS that a Deputy Sheriff personally serve a copy of this Order upon JOHN DOE;

THIS COURT FURTHER ORDERS that the signature of JANE DOE on this Order be and is hereby dispensed with.

By the Court

The Protection Order Registry

The Protection Order Registry is a provincial database and program, operating under the Ministry of Public Safety and Solicitor General. The POR was initiated to amass all protection orders issued in BC into one centralized place so that the police, Victim Services, and other public service agencies could have access to them 24 hours a day. The POR's mandate is to contribute to "the reduction of violence against women, vulnerable adults, youth and children through support of the enforcement of civil and criminal protection orders" (PSSG 2005). The POR office is located in Victoria, BC, and employs about five full-time staff members. POR clerks retrieve court order faxes sent throughout the day from court Registries all over BC. These court orders are standardised to contain all the required fields of the POR database, which has a different layout and appearance than the court order itself. Thus, data entry into particular fields is a large part of the POR clerk's work.

Four POR clerks under the direction of one supervisor juggle two main tasks: working with *criminal* court orders³⁴ in their computer "inbox," and working with paper copies of *civil* court orders. Staff at BC court registries send criminal orders via a multi-function fax copier machine that electronically moves the faxed documents into employee inboxes for further processing. Civil court orders, however, are still currently sent via the older system - faxed through regular fax machines to the POR. Paper faxed civil orders need to be scanned into the computer before the data entry clerk can begin standardizing fields.

To get the paper copies of court orders ready for computer scanning, either there is one designated clerk, or each clerk takes a turn throughout the day. Each supervisor has a different way of coordinating the clerk's tasks, and it depends on

³⁴ Criminal orders make up about two-thirds of the total incoming court orders, while civil orders make up about one-third (FC, 2005). Criminal orders include a variety of other court orders that are not discussed here. With the exception of Peace Bonds, criminal orders generally do not deal with domestic violence.

the willingness of the staff or the group's preference. "I mean, some staff have a preference that they don't want to do faxes, or they avoid data entry like the plague" (POR Supervisor 2004).³⁵ One POR clerk (POR-C)³⁶ found "it was nice to break it up just to be doing different tasks, because obviously, data entry for seven and a half hours a day is pretty monotonous" (2004). POR-C looked forward to retrieving the faxes since it gave her a break from data entry.

The person responsible for retrieving the faxes, known internally as the *fax person*, separates incoming orders into folders of about 10-22 pages, or roughly 9 orders each. Sorting faxed orders into file folders is a way to organize the work into a "manageable, piecemeal type of thing, and you can sit down and go, ok, I'm gonna do another folder now - it's a manageable way of doing business" (POR-S 2004). The *fax person* distributes folders to whichever clerk needs more work. "There's no procedure, it's just very casual. When you're done the work you ask for more files" (POR-C 2004). The important thing to each clerk is just to get all the orders done each day. "All court orders sent to POR have to be entered that day, so we work a long day to ensure that they're all completed" (POR-C 2004).

Most of the information keyed in by the data entry clerk is already on the order that was faxed in, but since POR has its own computerized database, it must be entered in a new standardized form so that orders can be easily sorted, searched, read, and modified on the system. Required fields of the POR database include the applicant and respondents' names, date of birth, gender, the dates, the court location, court level (either provincial or supreme), and whether the order is civil or criminal. The original scanned image of the order stays with the new POR version, so two representations of the same order remain in the database.

³⁵ From this point on, interviews with the POR supervisor will refer to her pseudonym: POR-S.

³⁶ From this point on, interviews with this clerk will refer to her pseudonym: POR-C.

Since each step involved in archiving orders is highly specialized and completed by different individuals at different stages, from multiple sites, each step is recorded and signed off, and the transfer in accountability is noted. The registry technicians date, sign and stamp incoming applications; the court clerk initials her or his log notes; the family clerk or lawyer authors the orders; the judge signs the final orders, the family clerk signs off and stamps the faxed orders, and the POR clerks record the receipt of each fax. Prior to 2004, the *fax person* used to send a confirmation back to the originating registry that confirmed they received the said number of pages. The rationale behind this confirmation step was

because the courts have an obligation to make sure that they send us everything that we're supposed to have, and it's our obligation to sign off. Say for instance we lost a page, ok? We've signed for it, we're supposed to have it. So if you ever wanted to do any finger pointing, not that anybody wants to, but it basically, we've signed for it, so now we're responsible to make sure it hits the database (POR-S 2004).

The POR does not do this anymore, as the registry receives about 500 court orders per day, and there is no time to send confirmation of every order, or even lists of orders that come in (POR-S 2005). When pages that were supposed to arrive are incomplete or missing, "the clerk would basically put in the pages that they have, because having something on the system is better than having nothing" (POR-C 2004). When the POR clerks have extra time, they work on an ongoing list of protection orders in the database that are missing dates of birth.³⁷ For each order, they would phone the police, or search on CORNET (another criminal records database) to get these pieces of information. Until then, the orders remain incomplete on the system.

Sometimes registry clerks are not able to gather all of this critical information because "usually there's a big panic to get [the order] typed and entered

³⁷ Applicants sometimes do not know the other party's date of birth, especially for criminal protection orders, such as an assault committed by a stranger, for example.

and off to POR" (FC 2005). FC knows this is important, but does not know what else to do, so she "ignore[s] the POR clerks" when they fax it back or phone to find out an individual's date of birth. The POR clerks "need to have complete information on the database and date of birth is vital to identify an accused. If you just have a name, it's not enough, it's not always enough to go on, because some people have the same name in the province" (POR-C 2004).

Conducting searches on the POR database will only bring up results if the searched word matches exactly with what appears on the order. POR-S explained:

Let's say for instance, the police are keying in uh, say the guy's name is Jonathan Smith? Well, we may have him on the system as...Peter Jon Smith, but in fact, he goes by Jon?...so it's Jon Peter Smith. Lets say um, you get his birthday wrong, you think it's March, but it's actually May? Well, you're not necessarily going to get that match" (POR-S 2004)

If a police officer phoned the POR to inquire about a person, and the court order was missing a date of birth, POR clerks are less able to definitively match up identities. POR-C explains this trouble:

It's difficult. It's not a sure thing. But if - we would print out the orders and fax them to police and they could make that judgment call, because they would have their own orders and their own files to look up...[the police] may have the information, they just didn't put it on the [application] (2004).

Clerks at the courthouse are also responsible for making sure POR orders get to the registry timely and accurately. Sometimes restraining orders are outcomes of hearings that do not originate as a restraining order hearing. For example, Lin originally applied for interim custody, but instead, the judge granted a restraining order that included custody. Court clerks often overlook protection orders that result from other hearings, and forget to deliver it to the registry for faxing to the POR (FC 2005). There is some grey area in determining whether certain court orders should or should not be entered into the POR. This confusion may lead to a court clerk deciding not to pass an order on quickly to the family clerk, the family clerk

deciding an order is not suitable or, once faxed, the POR clerk deciding the order does not belong on the registry.

The governing discourses in the POR mandate what belongs on the POR, and what does not. Sometimes these definitions do not fit appropriately with actualities. For example, one particular order was worded in such a way that prohibited an individual from going to a particular women's shelter. This order caused some confusion among POR clerks because "really what they were wanting, was for him to stay away from all the staff at the shelter, cause he was actually down there harassing the staff" (POR-S 2004). The POR did not have a list of all the staff members that were to be protected, but the order was entered anyway with the shelter's address as the "protected party." If the respondent decided to follow one of the staff members home, or target one of the staff members at another location, they would not be protected since it was the address, not the staff from which he was restricted (POR-S 2004).

When only an address, and no protected party's name is written on a faxed order, POR clerks cannot be sure the order is suitable for the POR. POR-S recalled receiving orders that specify the offender must stay away from 123 Main Street, for example. The order could be referring to a store from which somebody was repeatedly shoplifting, which would not be appropriate for POR, but it would be appropriate if it were his ex-wife's home or the child's day-care.

[A]n address isn't really good enough. We need the name of who's protected. Because say for instance she's visiting family in Prince George and he knows that she's up there and he goes up to Prince George. Well, yeah, he's staying away from 123 Main Street, but really what you want him to do is stay away from her, no matter where she is (POR-S 2004).

It is the less uniform cases which do not fit the textual framework that are difficult to accommodate because they cannot be recognized in the standard ways that make them actionable - either by POR clerks entering them into the system, or

police referring to them later on. The POR 'design team' continually consults with Police Services, Victim Services and the court registry to address these problems.

Everybody has to work together and agree to the changes because we're all stakeholders in the process. It's not just that POR can arbitrarily make a change because it affects so many other people (POR-S 2004).

Interestingly, protected women are not included among the 'stakeholders.' This supervisor's use of the common institutional term stakeholders, referred to the practitioners managing case files, not the subjects truly affected by the program.

Subsequent Hearings to Amend Orders

The restraining order holder's work is not finished once she obtains an order. Protected individuals need to continually reflect on the protection they have, and request amendments to their orders when their abuser finds ways to circumvent the legal restrictions. Restraining order holders may move, one party's income may change, or their children may begin school at a new location. In each case, another visit to the courthouse is necessary to adjust wording on the order to maintain sufficient coverage. Subsequent orders are products of courtroom hearings arranged to clarify or add conditions to an existing order, or to cancel an order.

Most of the time, restraining order holders have to return to court several times which is in part due to the speed at which the conditions are determined in court, and in part due to changing circumstances. It took many court appearances and amendments to get Robin's order to the point where it was specific enough to be effective. Her current order has become the most exhaustive order her lawyer has ever seen in his 23 years of practice (Robin 2005).

And part of [the reason] is cause I pushed...I can be really articulate when I have to be. And very objective when I have to be. And that has worked, I think, in my favor. So when I went back cause he showed up at the daycare, I

said I want every single possibility listed. Daycare, school, after school care, any facility where Sam may be in an activity or residing...So if we're in a restaurant and he pops in, and doesn't leave? I can call the cops. And unfortunately that's what it's gonna have to be (Robin 2005).

Robin's current order is a consolidation of six previous orders that were each created in response to an incident with her ex-partner that revealed gaps in the order's coverage. Nathan has brought her to court a number of times either by filling out a *Reply* disagreeing with her application, or by filling out an *Application to Change or Cancel an Order*. Each of these times he failed to appear for the hearing, and Robin appeared in court with her lawyer, who charges a couple thousand dollars a day.

...what [Nathan] does, and what other people might do like him, is they operate out of a mission. So they read the order, and if it doesn't say a-b-c-d, that means I can do it...when people are crafty, or manipulative, or psychotic, they will do whatever they can to...make it work [for them]. So for example, [Nathan]'s access is to be supervised at all times by someone appointed in writing by me. But it doesn't say he can't go to [Sam's] daycare...no one's been appointed in writing by me to supervise him while there. Or, he'll say, 'He's at baseball. I can come around and watch him play baseball.' 'Yeah but you've tried to take him three times. You can't be trusted to just come and watch your kid's game, cause you might suddenly grab him and go.'...This is what we're dealing with (Robin 2005).

Robin's order that was in place before the last major incident included a supervised access clause, but did not *specifically* read that Nathan could not attend the child's daycare. So he asked the RCMP officer who arrested him for drinking and driving one day if there was anything preventing him from seeing his son at the daycare. He showed the RCMP officer an old court order that predated the order containing the supervised access clause. The officer confirmed he was legally entitled to go to the daycare, so he did. Robin had to go back to court to have a specific clause added to the order preventing him from going to the daycare, or any school the child might attend in the fall. The wording of each condition or clause is crucial; yet, with such high demand for sparse court time, little attention is afforded

to the way orders are written. The result is less efficient in the end, with numerous 2-8 minute remand hearings to eventually get it right.

To fill in the holes that originally caused problems in Robin's order, her lawyer was well prepared for the hearing with a confined list of specific requests.

He said,³⁸

your honour, the applicant is asking for three things today. First, a more specific order; second, the enforcement clause; and third, to consolidate all of the existing orders into one. There have been several orders made in the past, and it has become very confusing...The order receiving does not affect [Nathan's] access rights, it really just clarifies what is on the existing order.

Robin's lawyer assured the judge that the respondent's rights were respected (his access was not to be affected), and he succinctly provided justification for each request. He strategically argued the order was needing amendment because first, Nathan had now been charged with impaired driving and has an admitted drug problem; second, the daycare workers are now concerned and upset; and third, he has not obeyed the supervised access clause. The first point, while somewhat unrelated, is indicative of 'bad character'. The second point presents the matter as a public safety concern, which is a high priority for the courts and police, and the third point, discloses a violation of the court order's current arrangement, an arrestable offence.

Lin has also been in and out of court several times to make adjustments to her order. Her ex-partner, like Robin's, looks for gaps in her court order, and contests the terms of each subsequent order, via the *Reply*. She recalled: "he replied, and within one week, I was in court three times...[A]nd this is what bites is the fact that all these days, I had to miss work. And I'm like - I can't do this" (Lin 2005). Not only did Lin lose wages for not being at work that day, she had to

³⁸ This dialogue was recorded during a courtroom observation of one of Robin's hearings, 2005.

inform her supervisor that she would not be there on only a couple of days notice. She is worried that they might become fed up with it, and let her go.

Even though Lin has been to court five times since she began the process a few months ago, there is still "a big gap in the order for guardianship and custody and access stuff," so he's at the door four or five times a day asking to see his daughter (Lin 2005).

He also takes advantage of the fact that I have to work in the morning so he'll come by in the morning knowing that I don't have time to call the police. Cause I've gotta get to work. He also knows what time I go to bed, cause I'm a creature of habit...It's really spooky, I'll walk in the house, and within 5 minutes he'll be at the door" (Lin 2005).

As found in this research, the clauses included on an order and the specificity of each clause have significant consequences. The wording needs to be general enough to cover all possibilities, and specific enough to be meaningful to enforcement practitioners.

This chapter began with description of the family clerk's work in drafting the court order and faxing it to the POR. There is a particular point where the applicant becomes less central than the court clerk who was actually *there* for the hearing, and the "stakeholders" who are affected by POR policy changes. Even though much work is executed by the POR clerks to get civil court orders on the provincial database, this research found that police officers do not access this database, nor are they under any obligation to respond to civil court orders. The next chapter details the final enforcement of the court order.

Chapter 8: Enforcement

I. Introduction

Once court orders have reached a satisfactory state (at least provisionally), and have been entered into the POR, other local agencies become involved in the activation of the court orders. Police officers are able to search the POR to gain background information before responding to a domestic violence call. Information Technology Services Division (ITSD) provides technical support to enhance certain data entry fields and features. The Ministry of Children and Family Development will occasionally query the POR if they are planning to place a child somewhere (POR-S 2004). Since the POR office is closed outside of business hours, the Provincial Emergency Program (PEP), that operates 24 hours a day, will respond to enquiries from Police and Victim Services. The Victim Safety Unit notifies registered protected parties about offenders' admissions and releases from jail (Victim Safety Unit, 2005).³⁹

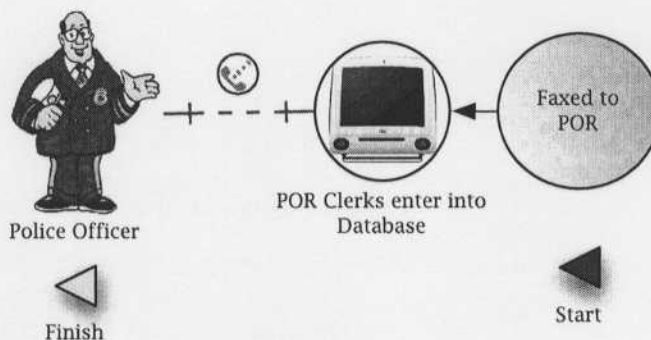
This Chapter focuses on court order activation by police officers responding to phone calls from restraining order holders needing help. Here, a major problem can be found. Police officers, responding to phone calls for help from restraining order holders, are expected to check the POR database for court orders so that they may determine an appropriate action to take. Action may include such things as transporting the protected party to a safe place, arresting the violator, or ordering the abuser to leave the premises. In practice, however, since police officers work under criminal jurisdiction, and, since the restraining order is a civil matter, officers are under no obligation to act on them. Officers may respond to civil matters if a criminal act has taken place, or if there are 'reasonable grounds' for believing that a

³⁹ Notification currently occurs during business hours only. The unit is developing a 24-hour system to be available in the year of 2006.

criminal act is likely to take place, but in practice, they most often choose not to pursue action.

Instead of responding to phone calls for help, officers direct callers back to the civil court for assistance, or at most, go to the location where there is a problem, and explain to the person in need of help that s/he should go back to the courthouse and ask the judge to add a *police enforcement clause* to her order. This written clause provides the officers with a directive to act on a civil order and overrides their lack of jurisdictional authority. It is not automatically added to civil restraining orders, and most do not contain this clause. This important clause authorizes officers to arrest if necessary, remove the abuser from the location, or in any other way "enforce the terms of the order."

Diagram 6. Enforcement



II. Police Enforcement

Police Response Before a Restraining Order is in place

The time period immediately after a respondent has been served notice of the court application, and before the hearing, can be a dangerous time for women seeking restraining orders. As Wilson and Daly confirm, "[w]omen who attempt to

terminate relationships with men are frequent homicide victims" (3). For this reason, I wondered about police protection *before* the order is legally in place, and entered on the POR. I asked a court clerk (CC2)⁴⁰ about what happens when an applicant is threatened during the time after service, and before the court appearance. She explained that fearful individuals "would just call 911. There's still the criminal system" (CC2 2004). POR-S recounted what should typically happen when an individual phones the police,

[t]he police are obviously going to diffuse the situation, as best, you know, they need to. And then, they're hopefully going to call or they're going to use CPIC⁴¹ to see if there's a POR, and whether they find something or not, they should still check POR so what they need to do is phone the 1-800 number that goes to PEP [Provincial Emergency Program], and then PEP will look for an order, and if one exists, they'll fax it off to the police station (2004).

Robin phoned 911 before her court order was granted when Nathan threatened to abscond with their child. The police arrived, and explained that without a custody order in place, either parent could take the child.

[T]hey could have let [Nathan] take [Sam], but they chose not to. And that's the thing - you don't know what a cop's gonna do. You get a cop that thinks you're some wacked out mom, and just looks at you, and talks to you for 5 minutes. Maybe you're hysterical - I wasn't. I'm really good at turning that stuff off when I have to, and be really strong in the moment, in front of people I have to be strong in front of. And um, don't ask me how, I just do. But uh, so he could have said, you know, Mr [Nathan] I think you need to take [Sam] - she's not coping (Robin 2005).

POR-S explained that when someone phones the police, the police would first check the POR database to find out if a court order exists. POR is the only database police have access to containing civil protection orders granted in BC. I asked Pol-1,

JA: Do you use the POR?

Pol-1: (laughs), Um, not really, no.

⁴⁰ From this point on, interviews with this clerk will refer to her pseudonym: CC2.

⁴¹ CPIC, the Canadian Police Information Centre, is a national criminal records database. It does not contain civil orders unless there has been a criminal offense involving the same individuals, *and* the involved officer decides to add a note to the file that there is a civil order in place (Pol-6).

JA: Does it [database] still exist?

Pol-1: I don't know - I guess it does! (laughs again).

This officer is not unique in his lack of knowledge about the POR database. Detachments in BC do not appear to use it regularly to check for existing orders. Pol-6 is reluctant to phone the POR because with each inquiry, the POR automatically sends all orders ever made between the two parties, making it difficult for him to sort through and figure out which one is the most applicable.⁴² He complained that they would receive "a whole bunch of pages," turning a simple query into too much of a burden. Another possible reason for the lack of consulting the POR is that for domestic violence cases police are required to make quick decisions and act rapidly, perhaps adding to what Pol-6 described as onerous.

POR and Court Service employees believe, though wrongly, that applicants facing immediate threat who do not have a court order "would just call 911," and that "the police are obviously going to diffuse the situation." An employee from Police Victim Services informed me that police are not legally permitted to respond to non-criminal disputes such as these (PVS. 2005).⁴³ Since there is no record, or no court order on file that can be activated at this point, under the Criminal Code, police have no legal justification for action. As Pol-1 articulated, "[w]e can't just go around violating everyone's Charter by arresting people we're not supposed to..." (2005).

Without the legal direction of a court order, police cannot intervene in a 'family matter,' unless a *criminal* offence is likely to occur if they didn't respond (Pol-6 2005). Damage to private property, theft, or possession of a controlled substance for example, are criminal offences. If police have probable cause to

⁴² It is not enough to look at one order (the most current) because often new orders refer to clauses in older orders without restating those clauses on new orders.

⁴³ From this point on, interviews with this practitioner will refer to her pseudonym: PVS.

believe a criminal act is likely to take place, they could respond as part of an overall directive to 'keep the peace' (Pol-4 2005). One constable interviewed clearly distinguished the two jurisdictions:

We deal with criminal issues. If the, uh, matter doesn't pertain to criminal issues, it would have to go through the civil court system. Civil matters like that⁴⁴ aren't covered by the Criminal Code of Canada, so they are a matter for the courts (Pol-2 2005).

PVS told me that police do not respond to civil matters because

[p]olice in [the city] are understaffed. They don't have time. If they are available, I would imagine they would come. They don't feel it's their responsibility. Police's job is to intervene when there's criminal activity - not just for a civil matter. I'm not sure how often they actually do respond to these cases...But it's not *up* to them to respond (PVS. 2005).

Police do not access the POR database in such cases because civil matters are beyond their jurisdiction, and they have no need to pursue a record check if the individual who has phoned the police declares there is no court order on file at this point. Some officers decide to phone the POR office to inquire about a particular individual, or to find out if an order exists, but it is not their responsibility. However, it is difficult for police to distinguish between a family quarrel and domestic violence over the phone in order to predict criminal behaviour.

Police Response After a Restraining Order is in place

Pol-6 explained that the difficulty is that police are the only public service able to help people 24 hours a day, so people with civil and criminal protection orders do call for help. I asked another officer whether they receive 'civil calls' in their detachment.

Pol-4: Yeah, we do get those sorts of calls; while we're not able to enforce them, we'll still stand by and keep the peace. Like we're here to keep the peace right? That's what we're here for.

⁴⁴ I had given an example scenario where a woman phoned the police station and said her husband was threatening her and she needed help.

JA: Can you give me an example of what would happen with a civil call?

Pol-4: We get calls like, say Mr John Doe is allowed to have the kids on the weekend, and there's supposed to be an exchange, but there's some disagreement on who's supposed to have the kids. If it's just over the phone, we can't really do anything. We can go over there to try to help them work it out, but we can't make him - or we can't just take the kids over to the other's home. We will stand by and keep the peace. We will sometimes mediate the situation, or just help people out and give them some direction, point them to other agencies; maybe we can get some of our victim service staff to talk to them. We will not just not respond and say, 'oh well, too bad for you.'

JA: If someone called in who had an order saying he threatened with some sort of criminal act, could you do something then?

Pol-4: Yes, now we're talking a criminal offence. For instance, if he threatens to burn her house down, yeah we can act on that.

It may be an obvious assumption that without a restraining order, there would be less an officer could legally do to act on a dispute, but once there is a court order in place, response would seemingly be easier to justify. Constables from small, medium and large sized detachments in four different locations of BC reported how they currently respond to civil restraining orders. The responses essentially led to the same conclusion: even though an approved restraining order signifies the legal system found enough cause to grant an individual protection, officers are *still* in most cases unable or unwilling to act on them. Several responses to my question, "*How often do you enforce civil restraining orders?*" follow.

Pol-1: We can't be acting on a civil order - if it's just a matter between the two people. If what we call the 'police enforceable clause' is on the order, then yes, we can respond. If it doesn't say that, we can only suggest they go back to court and have that added on. Cause we have no power to arrest unless it is stated.

Pol-2: It depends on the restraining order - if it says on it 'enforceable by police officers,' then we can enforce the conditions on that order. If the clause isn't on there, the person who has the restraining order would have to contact his lawyer, and get his lawyer to change it.

Pol-3: We don't [enforce them] - we're only involved in restraining orders that have the notation at the bottom that 'this order can be enforceable by the police'...A lot of times [restraining order holders] try to get assistance from

us, but [their order's] not enforceable. The only person that can do it is the courts. The only one that can change its status are the courts.

Pol-4: [c]ivil restraining orders are just that: they are civil. So no, we don't enforce those...[Y]ou're not going to find any police officer that will enforce this. There might be slight variation in internal policies about this, but no major differences between detachments...We can only enforce federal and provincial statutes, not civil ones. So we can enforce Youth and Criminal Justice, the Motor Vehicle Act...Unless the clause was in there, we couldn't do anything. We just direct them back to the court to prevent people from abusing the system, or using it to their advantage.

The Police Enforcement Clause

The police enforcement clause that officers referred to is the clause that can be added to a restraining order to make it enforceable. The clause reads, "This Court Order further orders that peace officers including members of the Royal Canadian Mounted Police are directed to assist in enforcing the terms of this order" (Family Court Registry 2005). Lin has this clause on her restraining order because her ex-partner was deemed a criminal threat, after being charged with criminal harassment, threats to bodily harm, and robbing a downtown store.

The police rely on [the clause] for the permission to participate - other than that, they don't want to be bothered. But if we say to them, we need you to do this, then they'll do it...if I just give her custody, and I don't put in the enforcement, she goes to the police, they wont help her (J1 2005).

The application of the police enforcement clause on civil court orders was initiated because police were having to respond to so many family court order breaches.

It was so bad, that the judges had to put in the clause. I mean, this month, mom would phone in and charge him, and the next three months would be fine. It was becoming a weapon of spitefulness and people would use it to beat the system. So it would go back and forth where there's a problem, and then for three months it would be fine" (Pol-4 2005).

The objective of initiating a policy with the enforcement clause was to cut down on the workload that police were unable to manage. The absence of the clause on some orders acts as a way to filter out some of the phone calls for help by directing the callers elsewhere (back to the civil courts). Pol-2 confirmed that if an individual

phoned in who did not have the enforcement clause on their order, the caller would simply be advised to "document that the person was on their property and they were so many feet away, and they weren't supposed to be. Then they'd take that to their lawyer and get the clause put on there" (Pol-2 2005). By offering the clause only to certain applicants, restraining order holders who do not have the clause may be turned away by police who do not anticipate the occurrence of a criminal act. While this practice makes little real life sense to a restraining order holder, especially during a time of conflict, this procedure makes institutional sense as a means of cutting down workload.

The enforcement clause is critical to the effectiveness of the restraining order. Without it, the police do not have the responsibility to respond, and thus, the court order may be ineffective if the person it restrains chooses to disobey it. Given its importance, I wondered how many restraining orders currently have the enforcement clause, and how many applicants even know about it. Although I could not take a sample of restraining order holders, my sources in the courts made it clear to me that most applicants do not know about the clause. Instead, restraining order holders assume that if they have a court order, it is enforceable. PVS confirmed that "a lot of people don't know what they were given in court either. Most of them get it wrong and they don't know what kind of protection they have - if any" (2005).

The registry technician is also under the impression that it is the applicant's responsibility to "state that they want police officer intervention during the hearing" (RT1 2005). She "advise[s applicants] - if it's that strict of a restraining order, and you're that frightened, make sure that you include [the enforcement clause]" (2005). J1 believes it is up to the judge to add this clause to the order if the circumstances seem serious enough. She declared, "I usually put them in. If I make an order it's

because I think it's really serious. So I'll put that in" (J1 2005). In sum, lawyers and applicants who know about the clause may request it, but the judge must be convinced that it is necessary.

Robin had little success obtaining help from the police before the clause was added to the seventh order amendment of her order. Without the clause, on two occasions, responding officers refused to assist Robin. After these experiences, Robin became more assertive and confident in telling the judge what specific protection she needed:

I told each judge 'you must put in there: Shawnigan police, RCMP, Saanich police, Victoria, They said, 'Ms [Robin], all we have to put is all law enforcement agencies.' 'Listen to me: I have had cops tell me unless their jurisdiction is spelled out on that order, they do not have to respond and support the order.' So if I'm living in [Metchosin], and I need [Westshore] RCMP, but if it doesn't say [Westshore] RCMP, I might get a cop that will not help me (2005).

For an enforcement clause to make it into a final order, a number of people at multiple stages must complete their part in the process. First, the registry technician would let self-represented applicants know about the clause. Second, the applicant or lawyer must request in court that it be included. Third, the judge must agree that the clause is necessary. Fourth, the court clerk must record in her log notes that the judge added this clause to the order. Fifth, the family clerk must write the clause in the final order. Sixth, the POR clerk must enter it into the POR database, and finally; once drafted, the restraining order holder must understand the importance of it, and tell the police she has this clause when she phones in for help. PVS clarifies that,

[i]f there is a clause [on the order], the person phoning in the violation - the one that has the order - must tell the police about the clause - they have to tell them that - because otherwise the police wont know it's there (2005).

Along with telling the police they have a restraining order with the clause when women phone in for help, even though all orders are entered into the POR

database (within 24 hours of issuance), since the police are not in the habit of using this database, the restraining order holder also

has to show us the documentation signed by the [other] party. Because otherwise, if they can't show it to us, we can't do anything either. Usually people are pretty good about providing the documents though (Pol-1 2005).

The height of a dispute is not an appropriate time for officers to insist individuals produce proper legal documents. Moreover, the entire purpose of maintaining the POR is so that officers may check the database before arriving. If a threatened individual calls for assistance, police may not have any knowledge of the seriousness or have any historical context because they do not consult the POR for existing orders.

Often individuals have more than one order, as in Robin and Lin's cases, and it is difficult to tell under normal emotional circumstances, which one is appropriate (Lin 2005). If officers do not have the time, jurisdictional capacity and/or priority to respond to family violence, they certainly do not have time to also read through several orders to determine which clauses are valid and which ones have been replaced in new orders. Instead, two out of six officers interviewed reported that before going to a residence where violence is reported, they would search for the accused on CPIC and PIRS (Police Information Retrieval System) to determine whether an order exists. However, as mentioned earlier, CPIC does not contain civil orders, and PIRS is no longer either being used or updated (Pol-6 2005).

While I came across slight differences in how things work at different detachments, Pol-4 determined that:

regardless of the police detachment, or RCMP or whatever, each detachment will respond exactly the same. Every police officer in Canada must respond the same, because they are responding to the Criminal Code (Pol-4 2005).

Pol-1, however, had a different view of enforcement differences between departments. She told me that, "it depends on department policy too. Here, at this

detachment we go by 'no call too small.' But who knows what other detachments do" (2005). J1 reasoned that individual officers have different levels of cooperation, and response depends more on what the court order looks like than detachment policy. She argued that the more standard the clauses are, the more likely the police are to participate. For example, if an order contains a great number of clauses, and is not written in recognizable standardized wording, the police will not be cooperative.

But if it's simply, she has custody, and the police will help her, um, resume custody of the child - if they have that order they're happy - Ok. Now we'll go do our job...It's very different between detachments, and it depends on who's on, on a given night. Um, yeah there's nothing that's like, perfectly predictable through the whole thing. You can see that - and I think I was making that pretty clear...I mean sometimes they don't have time - that's the truth of it. But, um, certainly in the smaller communities, there's a different policy everywhere. And you have to get sort of an enlightened detachment, otherwise, um, it's like a domestic violence thing for them (J1 2005).

Under section 127 of the Criminal Code, officers are legally able to arrest an individual for disobeying a court order. Pol-4 and Pol-6 informed me of this option, but also declared that while police officers *could* arrest under this legislation, most choose not to. Pol-6 explained that these case decisions have been a very unclear area of the law in BC, particularly in enforcing civil matters. He further explained that this avenue for arrest is just not really suitable for civil matters: "It's a bit of a grey area. No, it's not a grey area - it depends on what kind of order - what it says. There is an avenue for us to arrest for breaching an order. Because that is in the interest of public safety. That's in the criminal code" (Pol-4).

In other words, protecting people from 'family' violence is not in the interest of public safety - not because the public does not care about the issue - but because this protection is not included in the legislation, the governing text. However, ensuring individuals obey court orders is in the interest of public safety, as part of a more general initiative to keep social life orderly. As Lisa Price puts it,

"[f]unctionally, police forces exist to reproduce and enforce the social order. Whatever threatens that order is subject to police sanction. Accordingly, crime is defined not by victim's experience of harm, but by the perception - by the state, the police force, and/or the individual officer - of a challenge to the established order" (Price 1988:46). In short, if the abuser poses a threat to the public or to public property, he would likely be arrested; if he is a threat to his current or ex-partner, he will not be.

Previous research indicates that problems with enforcement and the failure to take family violence as seriously as stranger violence are issues of the *past*. For example, DeKeseredy and Hinch (1991) wrote that "[u]ntil recently, many Canadian police officers, like their US counterparts, were reluctant to arrest wife abusers despite their violent behaviors were, and still are, violations of the Criminal Code" (41). Police officers in BC *still* are reluctant to respond to civil cases, but the reason for this lack of response may not have as much to do with individual officer attitudes, which is what much of the literature has focused on. This research shows that lack of response, has more to do with the ruling discourses that are present both in the training at the police academy⁴⁵ and in formal legislation that does not provide a practical avenue through which to arrest.

Distinction between family matters and 'criminal' matters is not unique to Canada. For example, in Katzen's (2000) Australian study, when breaches happen during hand-overs of children for access visits, women were told by police that they would not be taking action because "it's a family court matter, it is not a police matter" (129). Binney et al. found a similar message mirrored in a UK police-training manual. Instructions read, "in dealing with family disputes the power of arrest

⁴⁵ Pol-4 recalled that at her training in the Police Academy, officers were taught not to respond to civil calls as it is outside their jurisdiction. She was instructed to check for the enforcement clause, and at most, go to the residence "to stand by and keep the peace."

should be exercised as a last resort. The officer should never create a police problem when there is only a family problem existing" (Edwards 1989). A training guide in Alabama, United States advised, "before invoking the criminal process however, the officer should consider several negative results that flow from such action. The most serious factor to be considered is that the physical arrest record may contribute to the offender losing his present employment" (Vandall, cited in Edwards 1989).

Husband to wife assaults still are considered less serious than violence against strangers in the street because in BC, and other Canadian provinces, the legislation classifies violence that occurs within families a civil matter, which is not afforded police attention. Violence against strangers in the street is classified a criminal matter to which police are obligated to respond, and able to lay assault, and other criminal charges if they choose to. A factor found most likely to provoke arrest in family violence cases, Rigakos (1997) noted, was evidence of forced entry and signs of struggle. This implies that "officers appear more concerned with property damage than with signs suggesting that an assault may have occurred" (212). These findings are not surprising since property damage is a criminal offence, and assault against an intimate partner or ex-partner is much more difficult to prove in court as a criminal matter. "Arrest has to be justified in the circumstances, and officers know how reluctant courts are to incarcerate, so they don't bother" (Pol-6). Judge Rae confirmed that "anyone who practices in this area is well aware, breaches of restraining orders are often very difficult to prove beyond a reasonable doubt" (Rae 1992:381).

Clearly, a number of factors affect police response to civil restraining orders. This includes whether detachments follow unique internal policy (as J1 identified) or solely the Criminal Code. Response depends on which officer receives the call,

whether the officer has time to respond to calls outside of their 'jurisdictional obligation,' how complicated the order is, whether or not a criminal act is likely to occur if they do not respond, and whether or not the enforcement clause is on the order. As the enforcement clause seemed so important, I asked each officer how often they see the clause on civil restraining orders. If their answer was vague, I asked for a numerical estimate; their responses follow.

Pol-1: It's very rare that we see them - the clause. We see them only in exceptional situations...Within the last year, I've probably only had, oh -- one.

Pol-3: I couldn't give you numbers, it would be hard to say by how many restraining orders are granted, and how many we get, and how often that clause is on there. You'd have to check with the court registry. It's not very common on a restraining order though.

Pol-5: Not very often...In my 10 years - (pause) - about twice.

JA: *Is this clause a new thing?*

Pol-3: No. It's been around forever. I've been around in the force for 16 years and I've seen them from day one.

The purpose of introducing the clause to civil orders years ago was to conserve limited officer resources by ensuring that police would be called on to enforce civil protection orders only when enforcement was specifically ordered. This purpose would be defeated if the enforcement clause was included on every protection order. Sorting through family violence issues to determine who the instigator is, whether or not to arrest one or both parties, and to bring the situation to some kind of resolution is a difficult task that requires time and resources that police detachments in midsize and larger cities cannot adequately support - at least in the way they are currently organized (J1 2005).

Lin has the police enforcement clause on her order, and agrees that police response to her order has been a waste of everybody's time. When she phoned the police for help after her order with the clause was in place, she was given the same advice as she had gotten prior to the addition of the clause: to document and report

to them each time her ex-partner violated the terms in her order so that she would have documentation to bring to the court.

I said to [the cops], 'why should I waste your time and mine?' They're like, 'well documentation.' 'Ok, if you guys are ready. If you want me to call you that many times, I will. And you'll be sick of hearing from me I tell you, within like two days.' (Lin 2005).

When Lin's ex partner moved out, he moved two floors up in the same apartment building as she lives in. Her restraining order prohibits him from being on the second floor of the building, from coming to her door, from going to her work, and from having any contact with her except for the gain and access of the child. He comes to her apartment to casually ask to see their daughter on days he's not to have access, to ask for cigarettes, coffee, or to borrow five dollars. Each time she called the police, by the time they arrived, her ex-partner was gone. "It's really tough, when someone's at your door, you call the cops, and they're gone...when the cops came here that day to arrest him, he jumped out the two-story window and took off runnin.' Cause there was a warrant out for him" (Lin 2005).

No Contact Restrictions

Responding police find it very problematic when Lin opens the door and sometimes lets her abuser inside. There is a "good victim" perception in the public sphere and among police and practitioners that those in abusive relationships who have applied for restraining orders are at the time not in contact with, and should not be involved with the ex-partner again. However, in reality, especially where there are shared children, this does not often happen. The literature on domestic violence tells us that abused women cycle in and out of relationships with their abusers (Bell 2003). It is important to acknowledge the complex power and control

dynamics operating in these relationships and to build that knowledge into our response to domestic violence.

Both Lin and Robin tried numerous times to work things out with their ex-partners, hoping to come to a level of stability at least for their shared children.

Robin described her efforts before she was granted her restraining order.

We did a lot of stuff together. We really tried to keep the, as much normalcy for [Sam]...And I would say that, I know my actions are saying something different, I'm spending a lot of time with you, but it's fun, and it's good for Sam. Sam loves it. It's enjoyable. This is good. It'd be like three evenings, or afternoons a week we'd spend together as a family right? But I shouldn't have done that in retrospect (Robin 2005).

Interestingly, the highest priority of Family Relations Act as written in the *Best Interest of the Child* legislation, is the well-being of the child(ren). However, where women make this their priority by trying to create a positive family environment for their children, they are frowned upon by judges for having contact with the respondent. This is because the restraining order stipulates that there can be no contact - so when there is contact - the one who sought protection in the first place is blamed for letting contact happen. Why did she let him in? Why did she lend him money? How on earth could she sleep with him after all that has happened? Lin 'cycled' in and out many times, and seemed clear during our interview that it had to be over, but has since then been in contact with her ex-partner. She reluctantly admitted:

I thought we were starting to get along again so we could be able to work it out, go to court, get maybe the restraining order dropped...I was letting him in, and we were talking, and it just seemed like maybe it was gonna work? But I've been through so many maybes with him, that I finally realized. No, no, no what am I doing?...And then I slipped last week-end and I slept with him, right?...I realized what I had done, like the next day (Lin 2005).

Lin chooses to continue to have contact with her ex-partner because she still has feelings for him, but she needs the restraining order for times that get physically violent and out of control. Continued contact makes perfect sense to Lin,

but judges and police officers regard it as an inappropriate, manipulative tactic. For example, "when the judge hears they've been dating again, or they've been living in the same house for two years, the judges get pretty unhappy" (Lawl 2004). Practitioners and police become frustrated when they hear there has been unauthorized contact because to them, *and* to Lin, the intervening work they have done seems a waste of time.

The judge's focus on the victim and frustration with her is likely to stand in the way of working to truly improve the existing court order with her safety in mind. On the other hand, there should be some preventative measure that would stop the few restraining order holders that try to use the order purely as a means of getting back at their partners. Lawl explained,

there are women who will change their mind and see the guy, and then have a fight, and then have consequences put on the guy for breach of the restraining order. So they see them, they even sleep with them, they have a fight, and they've never bothered to change it, so then they call up and say he's in breach. And on the civil side, there's nobody to call (2004).

Lin decided to stop calling the police not because she no longer needed assistance, but because, during her last phone call to them, she explained the incident, and the officer accused her of lying. He told her that the next time she phoned in with such a story, he was going to charge her with mischief. She phoned her ex-partner's probation officer, recounted the story, and proclaimed:

I will not be spoken to the way I was spoken to by him (officer), and I will *not* be called a liar. I wanted to let you know that I will not be phoning the police anymore...if I end up dead you'll know who did it (Lin 2005).

Chapter 9: Conclusion

This thesis was driven by the two central research questions introduced in chapter one: *What are the institutional conditions for the variability of outcomes for women seeking protection orders against abusers? More specifically, how is the work of the applicant and of the institutional practitioners coordinated in the application process, and what outcomes do these concerted efforts produce for applicants?* To take up these questions empirically, rather than proceed with a general analysis of the restraining order application process from a standpoint embedded in a complex ruling apparatus, it was imperative to begin inquiry with explicitly embodied subjects located in a particular time and place. My attention focused on how institutional and extra-local ruling relations penetrate, shape, and manage social relations throughout case processing.

Throughout inquiry, the three restraining order application forms served as central "texts in action" (Smith 2001b, 1990b). Formalized texts, such as these application forms, instruct practitioners to follow a particular sequence of action. With these inscribed instructions, the dialogic texts enable "coordination of activities across time and space, many times over, and with varying personnel" (Smith and Whalen 1995:4). A particular organization is written into the application, the reply forms, the court clerk's log notes, the court order template, the "cheat sheet" conditions page the family clerk uses, and the prescribed fields on the POR database. These texts generated in multiple settings and times are coordinated conceptually, and generate an internally consistent picture of applicant's circumstances.

The texts' iterative and standardizing capability reveal disjunctures, or points where objectified forms of knowledge and applicant's everyday knowledge

become "out of step" (Campbell 2003). For this reason, I thought of the texts as the locus of the epistemological fault line between the specialized knowledge of the administrative regime, and the everyday knowledge of women living with violence. Using institutional ethnography, I was equipped to discover social organization - while being careful not to presuppose it - in my investigation of specific procedural points that de-center and ensure women's safety. I focused on the way written and spoken institutional discourse is socially organized, and organizes each application's course.

Based largely on interviews and participant observation, I mapped out the sequences of action at each processing interchange. While data collected for this thesis came from one British Columbian courthouse, institutional practices identified here exist within a larger historical-political, social apparatus that extends beyond this particular site of study. Specific disjunctures were identified as such once I established the issues were consistent in the process, and not simply a result of one individual's way of doing things, or one applicant's unique circumstances. There is considerable overlap between themes discovered, which makes their isolation difficult. Nonetheless, themes are separated into discussion sections for clarity.

Transforming Lived Experience into Institutional Discourse

The BC civil restraining order application effectively separates and removes lived experience from the 'case' to be processed. In particular, the check boxes and written narratives solicit a set of responses that are institutionally relevant, but do not hold much, if any relevance to the applicant herself. The categories preserve "a definite form of words detached from their local historicity, from the specific circumstances and settings within which they are produced" (Smith and Whalen

1995:4). Categories on the forms provide for practitioners or the applicant herself to select, abstract, highlight, filter, route, and discard certain concrete particulars (McKendy 1992). Through such standardizing filters, completed portions on the application do not "necessarily represent what had occurred, but what of institutional concern has occurred" (Wilson and Pence). For example, when Lin checked off "custody" on her application, the form highlighted that she wanted custody of her daughter, but discarded real lived information that is pertinent to understanding the case. The category spared how she has picked up all of her children and run in her bare feet to get them away from abuse; that she hides her children at friends' houses when "things get really violent;" and that she shares a bedroom with her 14 month old daughter to prevent sudden abduction in the night.

The application forms are necessarily objective and abstract in order to be comprehensible by all successive persons who activate them. However, as lived experience is turned into a decontextualized phenomenon where aspects of experience are made invisible, it is impossible for practitioners to assess applicant's risk and safety needs from her standpoint. Practitioners who work on the forms are trained to read, write, and translate the specific set of particulars in institutionally recognizable ways and, as Wilson & Pence (no date) point out, are not required to make a fit between categories and actualities. The transformation of lived experience into standardized professional discourse, allows all applications to be treated similarly, since risk is only recognized institutionally in standardized forms. It is in this discourse, an institutional concept and textual reality, that practitioners are not able to recognize the real risks women face. Applications compared with each other as though each coexisted in the same time and place gives them a misleading appearance of equivalency that any practitioner can recognize.

Equivalency across applications becomes most obvious when the application form is transformed into a court order. Lived experience of the past and present is replaced with conditions and clauses that instruct those who will respond to the order in the future. The court order is "intrinsically dialogic in its reworking of terms that have already been given determinate, if essentially transitory, meaning elsewhere and elsewhere" (Smith 1999:136) - the applicant's past and present knowledge of everyday life is overridden. Aside from addresses, birth dates and names, thousands of court orders become identical in appearance. As such, the POR clerks are able to "do" a high volume of folders each day.

Just as the applicant's experiences do not fit into, or are not included in the application, in many cases, information in the produced court orders do not easily fit into the standardized fields on the database. The POR is structured around providing protection to individuals at a specific address. As long as the court order received by the POR has a protected person's name and address, the police are able to read and activate this order at any particular time. However, if the court order received by the POR restricts an individual's contact with an address (e.g., a women's shelter) to which there are no specific names attached, police would not know who the order is meant to protect at the listed address. In the example POR-S provided, the protected parties were the staff members at a women's shelter, but there was no accompanying staff list that made this clear. Therefore, the individuals would not be explicitly protected at the specific address.

On the other hand, when both an address and a protected party's name is specified, the individual is not protected from the instigator at any other location. An example provided by the family clerk (FC), was an order designed to prevent an individual from riding a specific bus that the protected party routinely rides to work. The order protected her on the bus, but not at the bus stop, or anywhere else

for that matter. Issues such as these create challenges for POR clerks who input orders, and confusion in enforcement, when officers or others who access to the POR choose to search for orders in the database. Search words that police type in to find existing orders must be exact or matches are not made. Spelling errors, incorrect dates of birth, and reversed or shortened names create problems matching orders on the system.

Decontextualized treatment of violence

Due to the application form's effective separation of lived experience from the application and final court order, practitioners develop a decontextualized, fragmented understanding of the applicant's circumstances. As Peacock and Pence (2002) point out, "[t]he system is designed to understand what generally 'goes on' in these 'cases' as opposed to what is actually going on in 'this case'" (64). For example, the Registry Technician (RT1) generalized that applicants often appear to her as though they had been drinking or doing drugs the night before visiting the courthouse, and concludes that this "what the 'family people' are like...I'm getting kind of bitter working up there I guess" (RT1 2005).

Bitterness and blame for women's circumstances is an effect of the social distance created between practitioners and applicants "by virtue of the authority of their job, employment status, and class" (Ridzi 2003). As members of a knowledgeable elite, staff are motivated to act on behalf of the state, alongside their peers or co-workers, to which they feel more closely aligned. This differential authority causes practitioners to reflect institutional interests in their disapproval of certain behaviour (drinking, doing drugs, or continued contact with an abusive spouse), while reinforcing certain values (i.e; ensuring the children are protected).

While mothers often share the same values for their children and families (dependable transportation, extra curricular activities, spending quality time with children etc.), they may have had difficulty meeting these goals because of the violence. Judges show great disappointment when mothers do not appear to have properly taken care of the needs of the children,⁴⁶ blaming her for the circumstances. J1 blames women who have relationships and children with abusive men. She stated:

This is what happens when we don't educate our women better. I'm not even going to educate the men. It's the women that actually have the baby fall-out, so, man, they better be plannin' ahead [laughs]. It's the old age question - why did you sleep with him? What were you thinkin'? (J1 2005)

The challenge that there are too many Ex Parte applications to deal with in court is also interpreted by J1 as the victim's problem. Rather than conceptualizing women's returns as necessary steps in the process of leaving (Fischer, 1995:427), or interpreting such disjunctures as problems in case processing, practitioners in the system attribute these as the victim's problem (Wilson and Pence). Victim-blaming attitudes, as described in Chapter 3 and 4 are linked to a decontextualized view of male violence - a view that has become foundational and inherent in some routine *systemic* procedures.

One systemic procedure that decontextualizes the realities of male violence is the requirement for all applicants to appear in court in front of their abusers to re-tell their narratives. It has been well documented that many battered women experience extreme emotional strain in the courtroom (Wan 2000 Angela Moe; Winner 1996 Karen; Fischer and Rose 1995 Karla; Ptacek 1995 James). The first time Robin appeared in court, her body and voice were shaking uncontrollably. Lin has a vivid memory of seeing her ex-partner's reflection in the courtroom doors with an "entourage of friends" for support. To Lin, her ex-partner's choice to invite a group

⁴⁶ Needs: generally defined by middle-class values

of friends was a deliberate intimidation tactic that brought down her confidence and made her feel "stupid," but for practitioners, having him there was an important step in guaranteeing equality between the two parties.

As an initiative to provide greater fairness between applicants and respondents, and to avoid the difficult task of sorting out the "he said, she said" situations, legislation was passed that encourages judges to consider the well-being of the children primarily. As J1 explained, she does not think of the two adults' well being, as they are just "peripheral nonsense." The *Best Interest of the Child* legislation was "formulated to promote gender equality and make the laws more equitable between the sexes" (Zorza 1995) in divorce proceedings. This directive is not suitably applied to domestic violence cases, where abused women's safety ought to be at the forefront of decisions made about her case. The logic should follow that children will only be safe when their mothers are safe and free from violence.

A procedure that places a fearful applicant in an intimidating setting where her abuser has the opportunity to ask questions about personal issues disregards the power and control batterers exert on women. Fortunately, for reasons of safety, restraining order applicants are not permitted to serve the respondent themselves, and instead, a sheriff or process server does this free of charge to the applicant. While the respondent may react in various ways after reading the court documents, this practice centralizes the safety of the applicant at least at the point where the respondent is served notice. With this policy, the applicant does not carry the burden of locating the respondent, she is not at risk in delivering the papers, and there is less opportunity for the respondent to convince her to discontinue. Unfortunately, this same protection is not afforded during the court hearings.

Lin's ex partner was given the chance to 'cross-examine' her during the hearing and started "beakin' off" (Lin, 2005) at her about what had happened the

previous Saturday in front of a full courtroom. J1 explained that an important part of her assessment of who seems to be the instigator has to do with the parties' behaviour in court and how they treat each other. In other words, provoking conflict between them in court serves the judge in making an assessment. The problem is that experience in the courtroom is not the same for both genders, even though each account is treated as equivalent. The incidents that both parties describe "are embedded in, and part of a social organization that generates systematic differences and reciprocities of experience for women and men" (Smith 1999:219). My research offers strong support for the view that the power imbalance between the two individuals must be acknowledged and dealt with accordingly.

Sheriffs are available to escort fearful applicants to the courtroom at the right time. Lin appreciated this, except that after the hearing, the judge sent her and her ex-partner together to the Judicial Case Manager to agree on a date for the next hearing. While support from the sheriffs is offered during parts of the process, the judges don't seem to share the concern for the applicant's safety in the courthouse. For instance, J1 said that, "she can't hide from that process...if you can't manage your own family, [you] can't tell us how we get to help" (J1 2005). Since all standardized cases at this point reflect little difference in circumstance and severity, all cases including the most severe, are reduced to a problem with family management.

All applicants are expected to appear in court in front of their abusers either before or after service, and if they do not appear, their application is simply dropped with no follow-up. A number of researchers have noted that women seeking protection make several attempts to leave the relationships, and many in the process of leaving are coerced and threatened by their abusers to drop petitions for orders (Jordan 2004; Malecha et al. 2003; Buzawa and Buzawa 1996; Fischer and

Rose 1995). Abused women who are successfully coerced to drop applications may face greater levels of risk, thereby rendering a need for some sort of follow up.

The high number of women who drop their applications has led practitioners to assume that "most of the time the interim order is all [applicants] want. They don't care about the final order - they just wanna have the control for that period of time" (Jl 2005). In contrast, Ford (1991) found that the empowerment and confidence applicants gain simply by beginning the legal process for protection may be more important to applicants than obtaining a final order. Ford suggested that proper conceptualization of women's rational use of the justice system may help practitioner's develop a more contextualized view of domestic violence.

Rather than working with a thorough understanding of applicants' circumstances, judges and lawyers verify seriousness of cases based on whether incidents have been reported to the police, or other authority figures. Applicants are asked for police reports, a letter from a social worker, or affidavits from neighbors or coworkers, for example. While in one study reporting rates were found to correspond with severity and frequency of abuse (Johnson, I.M., cited in Jordan 2004), other studies have reported that there are usually many violent incidents before the victim reports to the police (Jaffe and Burris 1981). Moreover, abused women are more likely to be seen in the health care system (Campbell 2004). Lin did not report the most severe violence because she feared someone from Ministry of Children and Family Development would take away her children. In short, the reliance on police reports to determine severity in court is not a reliable risk assessment.

The Significance of Governing Discourses and Interpretive Frames

Practitioners do not have the freedom to "to define and translate the realities of applicant experience in any way they see fit. Instead, they participate by activating specific ideals and concepts that have been operationalized and prescribed for them" (Ridzi 2003) by the policy and legal ruling apparatus. For example, when applicants first approach the registry, clerks are careful not to steer them in a specific direction, or tell them what to include on the application. Rather than work to develop the most appropriate safety plan for each applicant, as I discovered, the work process requires that all individuals be given the same advice, the same forms, and follow the same procedures. Despite creating the appearance of neutral practice, the standardizing procedures shape what will be known through their basis. The specific agenda of that discourse is a ruling one.

Variation across applications does not correspond with different safety needs; rather, variation reflects more what is happening at the institutional level. Each application's course varies depending on what time and day of the week the application is submitted, whether or not the judge 'knows' a respondent from criminal court, which applicants the court clerk "feels for," and how well an applicant understands the process, for example. Court practitioners intend to strictly uphold the principles of justice, but there is a contradiction in the way the system manages principles of fairness and urgency. The lengthy application process (involving initial service and the reply), conforms to the principles of fairness, but is inadequate in ensuring immediate protection to women. The Ex Parte application, introduced to provide urgent cases with immediate protection, violates the principles of justice (in hearing both sides at the same time) *and*, according to some judges, even exacerbates problems in the family.

Judges simultaneously and strategically work to balance providing fairness to both parties with providing immediate protection to those seriously threatened. In working through this systemic contradiction, they must also determine that by providing immediate safety, they are not going to "add fuel to the fire" (Law2 2005). Judges examine the statements on the forms, evaluate each party's demeanor, and compare two versions of the story. They also judge the applicant to determine whether she is a fit enough mother to be granted custody, whether she fits that particular judge's frame of reference of 'victim,' or whether she can be found equally at fault for the violence. Judge's decisions about each case are guided by their own set of ethics and politics about what is right and wrong, and by a standpoint in a ruling position, abiding by the various governing Acts.

Similar to judges and other court practitioners, police officers also operate within a complex ruling apparatus where their actions are restricted by legislation and interpretive frames. Current literature reports that police officers' freedom to use discretion is one of the major problems with inadequate family violence response (Ferrero, 1989, cited in Iovanni and Miller 2001; Sherman et al. 1992). Given discretion, police "usually exercise [it] not to make an arrest" (Lerman 1992:222). However, previous studies may have overestimated the degree to which decisions are based on individual officer attitudes about the issue. If they have not researched and understood the actual administrative processes they will have underestimated the influence that these processes have on officers' responses. Governing legislative discourses mandate what officers can and cannot do, and in the case of the civil restraining order in BC, officers are under no legal obligation to respond.

The work police officers do is highly mediated by both written and spoken "behind the scenes textual scaffolding" (Ridzi 2003:227), that inserts order into how

they evaluate certain behaviours and how they act on particular cases. All police officers interviewed for this research regard family violence as a matter for the courts, not to be dealt with by police, and they are taught in the police academy to keep civil and criminal matters separate. The instruction to direct civil calls back to the courts, is a "common matter of law that officers just collectively understand" (Pol-4). This collective understanding however, originated in a formal document, mandate, or training program, that could be traced back to. Individual officer discretion plays a limited role in civil restraining order enforcement in BC; for the most part, discretion is used on cases that fall into the "grey area." As revealed in chapter 6, officers are quite clear that civil orders are not a matter for the police. It does not make institutional sense for officers to 'extend' themselves into civil jurisdiction when they are already struggling to manage the criminal demand.

The introduction of the police enforcement clause was primarily an initiative to manage institutional workload more efficiently. This way, officers are not required to respond, and individuals who call for help are directed back to court. Of course, order contraventions and violence also occurs outside of courthouse operating hours. During situations that suddenly turn violent, such as Lin's ex partner climbing up through her balcony in a rage, simply documenting what happened that she will later bring to court is not an immediate solution to the problem. Essentially, without a police enforcement clause, restraining order holders that face immediate danger are left with no outside intervention, unless the abuser is likely to commit a 'criminal' act, such as vandalize public property, or steal a car for example. The absence of clauses on most civil orders delivers the societal and political message that family violence is not as serious as other forms of interpersonal violence.

Institutional Efficiency and Specialized Labour

In general, institutions accomplish necessary work by simplifying complex social problems. To complete work efficiently, a specialized division of labour, and regimented work pattern is paramount. From the point a restraining order application is submitted to the point it becomes a court order, a case changes practitioner possession from five to eight times. Piecemeal labour does not expose practitioners to the totality of experience: reasons that led the applicant to seek protection, what happened in the courtroom, what happened in her life in between hearings, what the outcome of the hearing was, and how her life changed with or without a restraining order. By only observing decontextualized portions of experience, practitioners do not get to know applicants in order to empathize or worry about her case outcome.

High volumes of piecemeal work hold more value in the case processing than quality completion of applications. The emphasis on quantity and not quality is evident throughout all stages of case processing, beginning when applications are first submitted. When applicants are missing information, do not understand a process, or do not want to proceed the way a practitioner is suggesting, the practitioner feels bitter and hostile toward the applicant. Since each practitioner is responsible for completing a specific task a number of times, she becomes frustrated when delayed or prevented from moving the application forward.

Perhaps the most illustrative example where institutional efficiency overrides meaningful solutions is that of courtroom functioning on family remand day. The primary goal in remand court is to get as many matters dealt with as possible. The order in which duty counsel may assist applicants and the order in which matters are called throughout the morning are determined by an institutional priority ranking that has little to do with each application's level of urgency. Fortunately, Ex

Parte orders are sometimes added to the court list if there seems to be enough time to address it. Priority for restraining order hearings has to do with which lawyers have pressured the court clerk, which lawyers will not be available at a certain time, which matters are already on the list, and whether or not there is a witness, for example. Matters anticipated to take longer or which seem complicated (restraining order hearings) have a lower priority, and will be stood down and revisited.

A judge in Ptacek's (1995) study described a similar predicament to that encountered by judges in BC, where the high volume of cases to get through hinders practitioner's ability to provide effective solutions:

...[I]t's late in the afternoon, and there are ten or fifteen 209A petitioners, plus hearings, and you're the only judge, and there's no victim/witness advocate, and if there's a language barrier - you realize that you are just going through the motions. And then that order is just a piece of paper...if something happens, if the inevitable happens, you're covered. That's it. You're covered because you've issued the order, and you've dotted the t's. But you know in your heart that you have not done anything that is going to protect that woman. Because what you have given her is that piece of paper. But you have not made her aware, really, of how frightening the situation should be for her, where she can go, what her options are, what she should do in an emergency, I mean, you've just not done any of that. And you know that you're really being ineffective (Ptacek, 1995:126-7).

J1 also believes the current system is not working well (2005). She and Law2 disclosed that since the applicant and respondent are told to return to court on a specific date, they believe they will have a chance to appear in court again. In reality, there is no time for restraining order or reply hearings on Thursdays (the day they are told to return). Even though the primary goal of the court is to be efficient, the total amount of time and resources spent on one case with numerous 1-4 minute long mini hearings is likely greater than the resources required to satisfactorily solve the problem at one time. Wilson & Pence (no date) endeavoured to estimate the amount of time necessary to complete a domestic violence case in the US. They found that most cases require less than ten hours of work input in total, but are currently taking months to complete.

Duty counsels and judges are aware of the ongoing problem where both parties return to court weekly hoping to resolve the case by way of a 10-15 minute hearing. Duty counsels try to prevent cases from dragging on week to week by encouraging individuals to agree to certain terms or conditions outside the courtroom on Thursday so that there is no need for a 'long' hearing. Portions of each case are resolved that may include changing the wording of a condition, agreeing to a maintenance payment, or adding an extra address to an existing protection order, for instance. Resolving matters in this fashion is considered a success in remand court, even though the larger issue is not meaningfully resolved.

Institutional Time versus Lived Time⁴⁷

Many abusive relationships follow a pattern of bouts of conflict followed by periods of relative calm (Jaffe and Burris 1981); hence, situations may become serious very quickly. While FC1 doubts the urgency when applicants "wait four months before they decide they suddenly need to come in to court on Friday at 4:00," abusive relationships do create sudden needs for protection, that may be on Friday afternoon, or Tuesday at three in the morning. In this research, lines of fault are observable between the everyday lives of applicants and the way the court system manages the efficient completion of applications. According to Wilson and Pence (no date), institutional time imposes on, and overlays lived time. In this research, it was found that throughout most of case processing, institutional time does not coincide with real lived time, or women's urgent needs for protection.

The Ex Parte application process is expedited in the interest of applicant safety, however, it is the day of the week and time of day applicants visit the

⁴⁷This theme title borrows terms first used by Ellen Pence in her research. See: Wilson and Pence (no date) and Peacock and Pence (2002)

courthouse, as well as which judge is present that mainly determines wait time. Applicants wait several times in line, each time anywhere from 5-25 minutes to speak to a clerk, and wait time varies from several hours to several days for an Ex Parte hearing. If she is not granted an Ex Parte hearing, she will wait weeks, or months for a 'regular' restraining order hearing, depending on how busy Thursday morning remand court is. During these hours, days and weeks she continues to live and manage her home life, her work, her children, her errands, her feelings and all her responsibilities that may, or may not involve serious conflict with her abuser.

During a period where women are under varying degrees of stress, uncertainty and upset, applications follow a sequential and fixed sequence of events that applicants have little control over. Once the forms are submitted to the registry with correct signatures, birthdates, addresses, and narratives, the application "enters into a time zone controlled, organized, and coordinated by processes that are negotiated by practitioners in the system" (Wilson and Pence:8). This time zone is that of trial scheduling, judicial workload, weekends and holidays, and specific days of the week designated for particular activity.

The number of days permitted for a respondent to reply, and the reply hearing do not correspond to lived time, which is every day of the week, at all times of the day. In particular, the procedure for serving notice with restraining order cases is based on an assumption that a shortened length of time between when the application is submitted and the date of the reply hearing, is safer. In some cases this is an accurate assumption and is beneficial to some applicants. For women who are waiting to get their child(ren) back after an ex partner absconded with the child, every minute matters.

In other cases, such as Lin's, the length of the waiting period wasn't a concern at all. To Lin, the risk was immediately following the notice served. Her

abuser reacted violently the day he learned about the application. The most dangerous time for many abused women is immediately after they physically separate from the abuser (Wilson & Daly cited in Jordan 2004; Schneider 2000; Hart 1996; Bachman and Saltzman 1995; McMahon and Pence 1995) - the same time most women seek court action. In short, whether the wait time is one day or two weeks, for some, the most dangerous time is immediately after the respondent learns about the application.

The courthouse manages the time spent on cases efficiently through 'mini' hearings. To appear in front of the judge for numerous 1-4 minute hearings, and one 13 minute hearing, Lin has taken half and whole days off work on several occasions. Without knowing how long she will be waiting on Thursday, coupled with sudden notice to appear for subsequent hearings, it has been difficult to give her employer sufficient notice that she will be absent. While Robin's lawyer appears on her behalf most of the time, she still needs to pay him for days of work, since he must sit and wait for the case to be called as well.

Recommendations for new Directions

Categories on the application forms select and discard certain concrete particulars that reflect institutional requirements, but do not primarily centralize applicants' safety needs. As each applicant's unique experience is transformed into a standardized format early on in the process, her application becomes one that does not represent her circumstances for practitioners to adequately assess risk and recommend the best response. Standardized applications construct a sense of equivalency, whereas it was found in this research that civil restraining order applications vary in their level of urgency.

The Ex Parte restraining order application was developed to deal with urgent circumstances, however, Ex Parte applications seem to fall into two general 'risk' groups. This research supports the notion that women do not experience uniformly what is known as "domestic violence." I observed that some use the court system as a legitimate means of managing difficult familial issues, calculating wins and losses with gaining better custody, access and guardianship arrangements with their shared children. "Common couple violence" (Johnson and Leone 2005), includes applications filed as a vendetta against another person (Law2 2005), as a means to control access to children, or increase maintenance payments (J1 2005), or to have the available option to phone the police if something undesirable, yet not generally life threatening were to occur (Law1 2004).

Conversely, some applicants are under serious threat having undergone severe violence for months or years. Often, social services, police, or a community group has sent the applicant to the courthouse to apply for a restraining order because they are well aware of the ongoing violence. This group includes seriously violent relationships where male abuse of power plays a greater, more threatening role. Law1 and Law2 believe that civil restraining orders in their current form do not work well in deterring these severe abusers.

Since circumstances and level of threat vary so much, somehow, a more thorough understanding of risk is needed at the beginning of the restraining order application process, so that level of risk can be properly examined and the most appropriate safety plan can be developed. It is not suitable to treat all "urgent" applications similarly given the great variation revealed between them. As Johnson and Leone point out, "[t]he more severe physical violence and consequences associated with intimate terrorism places its victims more at risk for needing urgent intervention" (2005).

There are several ways to accommodate this need. J1 recommended that there be a "culling process" at the beginning to more thoroughly scrutinize and select out the Ex Parte applications that reflect greater urgency. The risk assessment should include a one on one conversation between the applicant and a knowledgeable practitioner who would present a variety of options for the applicant to consider for herself. This way, the applicant is empowered to make her own decisions about what is most suitable.

Law 2 recommended a separate courtroom for restraining order hearings so that applicants do not face the emotional strain and social risks that accompany disclosure of private information in a public setting. The emotional strain for women facing an abuser in a courtroom is greater for restraining order applicants than others appearing in court on a Thursday, and they should be separate (Law2 2005). Findings in this research support the need for slightly longer hearings that will resolve all dimensions of a case, rather than many short hearings spanning weeks or months that only provide single-issue solutions. Time allocated to these hearings should reflect the applicant's need and may not necessarily take the form of a formal courtroom hearing; they may resemble more of a safety plan discussion.

Adhikari, Reinhard, & Johnson (1993) point out that "[t]he police, courts and other legal institutions together do not have the power to order protection in domestic cases such as these, and it is misleading to lead domestic violence victims to think otherwise...they should be reconceptualized, renamed, and presented to victims more truthfully and realistically" (270). This thesis research has also found that the resources required to act on civil and criminal restraining orders are currently not available, and it is misleading to offer a civil restraining order to women who believe they may call the police whenever they need assistance. For

restraining order holders to find out the police will not respond to her call for help the moment she faces danger is too late.

In reflecting on the limited resources and jurisdictional restrictions in civil restraining order enforcement, advocates and future researchers need to consider whether it would be beneficial to lobby police to enforce the terms of both civil and criminal restraining orders. With contradictory findings on mandatory response, requiring police action may not be an appropriate direction sought for civil orders. Even though prosecution and incarceration delivers the message that domestic violence is a crime not to be tolerated, and may act as a deterrent to some, arresting husbands of women who are unemployed, lacking certain job skills, and/or belong to oppressed identity groups gives rise to other devastating consequences.

In general, the objectives of the civil justice system to maintain complete fairness and neutrality - for circumstances that are not fair or neutral - come into contradiction with much of what the literature has offered about domestic violence. In the BC civil court under study, domestic violence, a unique form of violence, is not contextualized and is treated in similar ways as other forms of interpersonal violence. Gender blind terms such as 'family matter' prevent appropriate conceptualization of the problem, and violence is not considered patterned, coercive, and ongoing. Assessment in the courtroom is piecemeal and incident focused, thus, if both parties act violently, both parties are deemed at fault; self-defense is not a usual consideration in family matters. While individual judges may think about these issues, they are not built into institutional response.

Abolitionists, as discussed in Chapter 2, are critical of engaging the law in response to domestic violence primarily because the legal system's progressive appearance persuades counter-hegemonic forces to consent to its domination. In contrast, feminist realists have noted that some types of legal intervention are

critical to women's safety. Are advocates able to penetrate and reclaim radical space in legal and state organizing discourse while resisting co-option? Is it enough to resist injustices at particular points in a process without rejecting a whole system of response? This research has demonstrated that it is at least possible to pinpoint particular points in the restraining order application process where women's safety becomes invisible or ignored. In my opinion, this promises potential for reform of particular injustices, rather than a total rejection of this type of response.

Civil restraining orders, provide a unique type of response offering protection for "life-generated risks" (Frederick and Lizdas 2003) including custody, access, women's exclusive occupancy of her residence, financial aid, temporary possession of property, or spousal support. Criminal restraining orders are not equipped to deal with non-criminal behaviours such as isolation, threats or intimidation, financial controls. It is crucial to continually reflect on the limits of the civil restraining order as a unique response, and more broadly, evaluate current legal and institutional systems' ability to protect women from violence. It is equally important not to lose sight of the broader underlying cultural, institutional and ideological factors that foster and encourage male violence against women.

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Appendix A: Reply



REPLY

In the Provincial Court of British Columbia

COURT FILE NO.:
FMEP NO.:
COURT LOCATION:

Case name
Name of parties as they appear on the application.

In the case between:
NAME _____
And:
NAME _____

Other party's address for service.

To:
NAME _____ **APPLICANT**
ADDRESS FOR SERVICE _____
PROVINCE _____ POSTAL CODE _____ CITY _____ PHONE _____ FAX _____

Your current address for service.

From:
NAME _____ **RESPONDENT**
ADDRESS FOR SERVICE _____
PROVINCE _____ POSTAL CODE _____ CITY _____ PHONE _____ FAX _____

IMPORTANT NOTE TO APPLICANT:
If the respondent's reply includes a claim for maintenance and you, the original applicant, do not file the required financial information with your reply, the court may attribute income to you and set the amount of maintenance to be paid. The respondent has estimated your gross annual income as set out in Item 2 below.

What part(s) of the application do you agree with?
Check the appropriate box(es) and fill in any required information.

Agreement with application:
I agree with the request(s) of the applicant for:
 custody guardianship access
 maintenance for a child spousal maintenance parental maintenance
 a change in or cancellation of an earlier order
 other order (specify) _____

I wish to make the following comments regarding the request(s) even though I agree:

What part(s) of the application do you disagree with?

Disagreement with application:
I disagree with the request(s) of the applicant for:
 custody guardianship access
 maintenance for a child spousal maintenance parental maintenance
 a change in or cancellation of an earlier order
 other order (specify) _____

Explain why you disagree with the request(s).

I disagree because:

1 of 2

If you are the respondent, and if you wish to apply for one or more orders, this page is where you request these order(s). You must tell just enough about your case to let the other party and the court know what your application is about.

Fill in the required information for any child(ren) to whom your application applies.

What child access arrangements (if any) are you requesting?

If you are asking for maintenance, fill in this information.

If you are asking for a restraining order, explain why you believe a restraining order is necessary.

Respondent's own application:

CASE NAME:

COURT FILE NO.:

I wish to make application for the following:

- custody
- maintenance for a child
- a change in or cancellation of an earlier order
- an order that arrears of maintenance under the *Family Relations Act* be cancelled or reduced
- other order (specify) _____
- guardianship
- spousal maintenance
- access
- parental maintenance

1. Children (complete if you are asking for custody, access or child maintenance)

NAME(S) OF CHILDREN

BIRTH DATE(S)
MM/ DD / YYY

_____	_____
_____	_____
_____	_____
_____	_____

(If applying for access) I am asking for access to the child(ren) as follows:

2. Maintenance (complete if you are asking for child or spousal maintenance)

I believe that the applicant's gross annual income is \$ _____ because

3. Restraining Order (complete if you are asking for a restraining order)

I am asking for an order prohibiting the applicant from interfering with or harassing the child(ren) and/or myself because _____

2 of 2

Sign your name and state today's date.

State name of respondent if any

Dated _____

Name of respondent's lawyer _____

Signature of respondent or respondent's lawyer

Appendix B: Glossary of Terms

- Access** Parenting time spent with the children by the spouse who does not have day to day parenting care of the children
- Adjournment** The postponement of a court hearing, usually to a specified time and date
- Affidavit** A written statement sworn or affirmed before a Commissioner. The affidavit used for a restraining order application is the same generic form used for all provincial applications.
- Applicant** Any individual who applies to the court for relief under Provincial family legislation.
- Application to Change or Cancel an Order** If a party's circumstances have changed since the Court made or last changed an order, the party may file an application to change or cancel the order. This form can also be used to change or cancel an agreement filed under the FRA, such as an original restraining order application or to change or reduce arrears under a maintenance order.
- Application to Obtain an Order** An application made to the court seeking a restraining order, a custody order, a guardianship order, and/or a maintenance order. The application must be filled out separately for each of these components when done on separate days. See Appendix A
- Best Interests of Child** A Provision in the Child, Family and Community Service Act (CFCSA) where the safety and well-being of children are the paramount considerations. All relevant factors must be considered in determining the child's best interests, including for example the child's safety and care; the child's physical and emotional needs and level of development; the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship; the child's cultural, racial, linguistic and religious heritage, etc.
- Case Conference** Case conferences are held to give the parties an expeditious way to resolve any contentious issues and hopefully reach a consent or early decision. At the conclusion of the case conference, one of three events will occur the judge may require a second case conference if resolution is close; the judge may refer the unresolved issues to be scheduled for a mini-hearing; or the judge may order the matter to be set for a full hearing.
- Certified Copy** The original or a copy of a court document that a proper officer of the court has certified to be a true copy by an original signature
- Child** A person under the age of 19
- Civil Court Registry** One of two sections of the Provincial Family Court. The other section is the Criminal Court Registry.
- Court Clerk** A clerk who performs duties in the courtroom during hearings and

trials, and relays information from the judge to the registry staff.

Consent Order An order to which both parties give their consent, without duress or deception.

Custody Responsibility for care and guardianship of a child

Custody and Access Order A Court order that gives the day to day control and care of a child to a specified parent. The order may also specify access to the parent who does not have day to day parenting of the child

Duty counsel Family lawyers paid by Legal Services Society (LSS) to assist people with family law problems or child protection issues (where the Ministry of Children and Family Development becomes involved with the family). Each party that appears in a family court hearing is entitled to representation by a duty counsel.

Ex-parte Family Application An application to the court that is of urgency, and is not served on the other party. Most restraining order applications are currently being processed on an Ex Parte basis.

Ex-parte Order An order of the court that is granted without notifying the other party, or the party to which the order is filed against. An Ex-parte Order is not a final order of the court, and can be 'set aside' (cancelled) by the respondent upon giving notice to the applicant.

Family Clerk A general term for all court clerks working in the family section

Family Court List A list of all cases scheduled in each courtroom, each day. Lists are printed for each courtroom as a guide for the court clerks and lawyers. The list shows the date, courtroom, judges name, parties first and last name, the nature of the application, case number, counsel on record, and file number.

Family Court Registry See: Civil Court Registry

Family Relations Act (FRA) Provides that the Provincial Court has jurisdiction over: custody, guardianship, and access; maintenance; parentage as it relates to maintenance; restraining orders, when it relates to making or enforcing a custody order (not those dealt with in Supreme Court as part of a divorce).

Filed A document is filed when it is checked for accuracy and date-stamped

Financial Statement A document listing a party's income and expenses, and, if applicable the child's portion of that income and expenses. It must be filed by the applicant and the respondent in a maintenance matter.

Guardian A person appointed by law to take care of a child and the child's possessions (estate). A guardian is responsible to make major decisions for the child, such as what type of schooling and health care the child should have. A parent with either access or custody can have guardianship.

Judicial Case Manager - An employee of the court who schedules all trials and hearings to be held in each courtroom.

Legal Services Society (LSS) Commonly known as Legal Aid, is an independent,

non-profit organization that provides legal counsel to help make or respond to an application made under the FRA, and in some cases, under the Child, Family and Community Service Act (CFCSA). A party must meet certain financial qualifications before being eligible for assistance.

Maintenance Money paid by one spouse to the other to provide for the children or the spouse after the relationship has ended.

Notice of Motion Notice given by one party to another that the party intends to apply to a judge for an order or direction. The Notice of Motion is used for issues that may be resolved at a hearing rather than a trial. The court staff look upon these as favorable since hearings take less time and are of a less expense than trials. If the party who is served with the Notice of Motion does not appear at the scheduled hearing date, the judge may proceed and make an order in his or her absence.

Order A direction of a court or judge that is binding on the parties to the action. An order is usually first made orally by the judge, then prepared in written form by either a clerk or a solicitor for the judge's signature.

Party One of the individuals involved in a court case. In a restraining order application, the party could be the applicant or the respondent. The Director of Maintenance Enforcement can also be a party in an application if it is related to an order filed with the Director.

Protection Order A general term that includes the more specific restraining order.

Registry Technician (RT1) A front line clerk of the court who assists individuals by handing out application forms, date stamping and submitting completed applications, and otherwise providing information to the public. For most applicants, the Registry Technician is the first person they make contact with to initiate the process.

Reply A document that a respondent in an action must file (with a counterclaim if desired) in order to attend the first appearance and subsequent proceedings. The Reply enables the parties and the court to know, in advance of any court appearance, whether the case is contested, and which matters are at issue in each case. If no reply is filed, the respondent is not entitled to receive notice of any hearings or conferences, and orders may be made in the respondent's absence. For a blank form, see Appendix A.

Restraining Order An order of the Provincial Family court. See Form 1: Application to Obtain an Order in Chapter 3.

Respondent A party against whom an action is taken. In a restraining order application, the respondent is the party to be restrained, or the party the applicant has filed against.

Stand down The action when activity in the courtroom takes a break and the judge steps down from the stand.

Substituted Service Service conducted in some manner other than personal service that is specified and authorized by the court. It is used when the party who should be served cannot be found or reached

Transcript An official record of court proceedings, or what happened in court. All court proceedings are recorded on tape, and through note-taking by a Court Clerk.

Trial A judicial examination and determination of the issues between parties to an action. A trial takes place before a court that has jurisdiction over the nature of the issues between the parties

Trial Coordinator - See Judicial Case Manager

Witness A person whose declaration under oath is received by the court as evidence for any purpose. Evidence is given on oral examination or by affidavit.