

The Domestic Violence Intervention Act **In a Nutshell**

- Allows a VICTIM (>16, is/has cohabited with, or is the parent of a child with the respondent) of domestic violence to apply for a 30 day Emergency Protection Order.
- “Domestic Violence” is defined in the *Act* to include violence at the criminal end of the spectrum. It does not include emotional, verbal, financial or religious abuse.
- There is a TWO PART TEST to be met on a BALANCE of PROBABILITIES. The applicant must show that:
 - (a) domestic violence has occurred; and
 - (b) an order should be made forthwith.

“Forthwith” means without waiting for appropriate relief from another court.

- All applications are heard by TELEPHONE, under OATH or AFFIRMATION and on the record before a designated JP (all are lawyers with 10+ years at the Bar) between 9:00 a.m. – 9:00 p.m. seven days a week. Most applications are heard within a few hours of the initial call. A designated person (peace officer, victim services, transition house worker) can seek a hearing overnight (9:00 p.m – 9:00 a.m.) and the JP will hear it if the matter cannot wait until morning.
- The toll-free number to call to make an application is: 1 (866) 816-6555.
- There are NO FEES for any relief under the *DVIA* including the initial hearing and any request for a review hearing or extension.
- There are about 200 – 300 EPO applications each year. In 2006, 57% were granted, 37% denied and 6% abandoned before completion.
- If denied, there is no right of appeal and as there is no notice requirement, it is possible that the respondent may never learn the application was made.
- If granted, the EPO is effective for a maximum of 30 days. It can include many provisions to protect an applicant and children, including exclusive possession of a home, no contact order, respondent to remain away from a particular place, police escort to retrieve belongings, temporary control of property (cars, keys, household and bank accounts, etc.), restraints on

dealing with property, seizure of weapons and temporary custody of children. There is a basket clause allowing other relief as justified.

- The custody and access provisions of an EPO prevail over any custody or access order made under the *Divorce Act* or the *Maintenance and Custody Act*, but not the *Children and Family Services Act*.
- The applicant has the right to keep his/her address confidential from the respondent and may seek a publication ban if the EPO is granted.
- Police serve EPO's on the respondent. Police also provide the applicant with a copy of the EPO. The EPO is effective when made but does not bind the respondent until s/he has notice of it.
- All EPO's granted must be reviewed by a Supreme Court Justice within 7 business days of receipt. If there was sufficient evidence to grant the order, the EPO will be confirmed or varied (non-substantively). Over 90% of EPO's are confirmed. If there was insufficient evidence to grant the EPO, the Justice will order a review hearing on notice to both parties. This occurs in 5-6% of cases.
- After the respondent has been served, either applicant or respondent may request a review hearing as of right, on notice to the other party by completing a Request for Hearing form available from the Supreme Court. A request for review does not stay the EPO. In 17% of cases, hearings are requested prior to the mandatory review by a Supreme Court judge. Once requester, review hearings are usually heard within 5-7 days. Reviews should be requested ASAP as no relief is possible after the EPO expires.
- The evidence before the JP becomes evidence at the review hearing. At the review hearing, the Supreme Court Justice will hear any additional evidence (typically oral testimony rather than affidavits) and cross-examination and will then CONFIRM, VARY or TERMINATE the EPO. On application, the Supreme Court Justice may also EXTEND the EPO for a maximum of another 30 days. Roughly one-third of EPO's are confirmed at the review, a quarter are confirmed but varied in some way, and a third are terminated or revoked. Requests for extensions are granted about half the time.
- There are currently four N.S. cases on the *DVIA* and several family law decisions that make reference to EPO's previously granted. The thrust of the case law in N.S. is that an EPO should not issue unless there is a realistic threat of immediate harm to the applicant or a child. The EPO process is not a speedy substitute for other family law proceedings. Custody and access issues, in particular, should be heard on notice in

family court or the Supreme Court (Family Division) unless emergency relief is justified. Applicants who mislead the JP, fail to fully disclose the circumstances, exaggerate their claims, or gild the lily risk serious repercussions far beyond termination of the EPO. There is the potential for a costs order at a review hearing and the applicant's actions may even be seen as a factor militating towards a change of custody in subsequent custody proceedings.

- The Supreme Court (Family Division) has an EPO protocol that allows applicants with EPO's to get a short interim hearing prior to the expiry of the EPO. Applicants who do not have an EPO may also get expedited hearings using the Supreme Court (Family Division) Emergency Hearing rules.
- Breaching an EPO, or making a false and malicious application are summary offences punishable by a fine of up to \$5000 or imprisonment of up to three months or both. There have been relatively few charges prosecuted for breaches and there may be no prosecutions for false applications.
- You can refer clients to on-line FAQ's about the *DVIA* at the Legal Information Society of Nova Scotia (LISNS) website: http://www.legalinfo.org/faqs/faq_pages/emergency_protection.html or click on FAQ's and Criminal Law.