LEGAL BULLETIN

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Manitoba Protection and Prevention Orders: A Shield or Sword?
The Legal Battlefield in *Lafreniere v. Bulloch* 2015 MBQB 137

Introduction

Lafreniere v. Bulloch tells a story that, unfortunately, is commonly heard in our courts: a relationship that has ended in abuse and antagonism with a child in the mix.[1] This case helps to distinguish between Protection and Prevention Orders, emphasizing that the evidentiary threshold to obtain a Prevention Order is higher than that of a Protection Order. These types of orders are separate from other family law orders, such as parenting time, decision-making, and child and spousal support, which are handled under the *Family Law Act* or the *Divorce Act*.

What are Protection and Prevention Orders?

In Manitoba, individuals experiencing stalking or harassment may seek a Protection Order or a Prevention Order under *The Domestic Violence and Stalking Act* (the "*Act*").[2] For ease of understanding, a Protection Order can be viewed as an initial, immediate and more accessible form of legal protection (step one), whereas a Prevention Order represents a more advanced, and stringent level of intervention that is time consuming and costly to obtain (step two).[3] Although, it is not necessary to have a Protection Order to obtain a Prevention Order.

A Protection Order, commonly referred to as a "restraining order," is typically granted on an expedited basis by a Justice of the Peace and can last up to 3 years.[4] Applications may be made in person, via telephone, or via video conferencing with no costs associated.[5] These orders impose limited conditions and can be issued without prior notice to the Respondent (the alleged perpetrator).[6] However, once served with a Protection Order, the Respondent has the right

[1] *Lafreniere v. Bulloch,* 2015 MBQB 137.
[2] The Domestic Violence and Stalking Act, CCSM c D93.
[3] Government of Manitoba, "Legal Options for Protection from Domestic Violence and Stalking: Protection Orders, Prevention Orders and Peace Bonds," online (PDF) <manitobacourts.mb.ca/site/assets/files/1172/mg6098e>
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

to apply to have it set aside (cancelled).[7]

In contrast, a Prevention Order is significantly more difficult to obtain due to the serious and potentially indefinite conditions that may be imposed.[8] Such applications must be heard by a judge of the Court of King's Bench and are often accompanied by court and filing fees.[9] The conditions imposed can include the Respondent being ordered to pay compensation to the Applicant for expenses such as loss of income caused by the Respondent's actions, therapy costs, and moving costs if the Applicant was forced to move because of the Respondent's actions.[10] The Court can also order that items the Respondent uses to further the domestic violence or stalking be seized by police, like weapons or vehicles.[11] Should the Respondent continue to perpetrate acts of domestic violence or stalking with another vehicle, the Court can have the Respondent's license suspended.[12] Finally, the Applicant can be granted sole occupation of the family home.[13]

History of Proceedings

A few proceedings led to this final hearing, and they are as follows:

Separation and Obtainment of Final Order

Ms. Lafreniere (the "Applicant") and Mr. Bulloch (the "Respondent") are known to one another; they were in an on-and-off relationship from 2011 to 2013, from which they have a son.[14] The parties separated three times throughout their relationship, the last and final time being in 2013.[15] After their second separation, the parties obtained a Final Order under the *Family Maintenance Act* on December 3, 2012, with respect to care and control of their son as well as child support arrangements.[16] In late June 2013, the Respondent made a motion to vary this Order to seek primary care and control of the parties' son.[17] However, in this Final Order, there was a condition that the Respondent be subject to drug testing. The Respondent went to the court-ordered hair and follicle drug testing session with hair shorter than the required 1.5 inches; he refused to show his chest hair and had shaved his armpits and legs clean of hair.[18] Defying the terms of his order and preventing himself from providing a negative drug test.

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[7] *Ibid*.
[8] *Ibid.*
[9] *Ibid*.
[10] *Ibid.*
[11] *Ibid*.
[12] *Ibid*.
[13] *Ibid*.
[14] *Supra* note 1 at para 9.
[15] *Ibid*.
[16] *Lafreniere v. Bulloch*, 2015 MBQB 10 at para 3.
[17] *Supra* note 1 at Para 77.
[18] *Ibid* at para 78.

Protection Order Attempts

The Applicant tried to obtain a Protection Order in June 2011 against the Respondent, but her application was dismissed.[19][20] In December 2013, she made another application for a Protection Order; this application was made after the Respondent had pleaded guilty to assaulting her, yet the application was dismissed once again.[21] Finally, on December 17, 2013, the Applicant made a third attempt at obtaining a Protection Order, and she was successful at obtaining it for herself and her first son, but not the parties' shared child.[22]

New Matters Surface

On January 6, 2014, Mr. Bulloch filed an application to set aside the Protection Order.[23] Two days of trial took place in October 2014.[24] However, the parties were not able to complete the trial in those days and required more time.[25] Trial dates were scheduled for 2015.[26] Prior to the completion of the trial, three new matters with respect to these two parties appeared on the Family Motions List in November 2014.[27] This led to the issue of whether all matters pertaining to these parties should be heard together. In *Lafreniere v. Bulloch* 2015 MBQB 10, ACJ Rivoalen, as she was then, decided that all matters would be heard in one hearing.[28] The substantial issue with having these proceedings heard together, was whether they would prejudice Mr. Bulloch. The Court found the following: the *Court of Kings Bench Rules* 5 and 6 encouraged parties to consolidate any claims against the same opposing party into a single proceeding.[29] Furthermore, the applicable case law supported this presumption. In *Gilbart v. Ventura Custom Homes Ltd.*, 2003 MBQB 247, the Court affirmed that claims arising out of the same cause of action or involving the same parties should be joined in a single proceeding to avoid a multiplicity of actions and to promote judicial efficiency.[30] The Court stated that there is no prejudice to the Respondent to join the proceedings as there is more onus on the Respondent to demonstrate that the Protection Order should be set aside, whereas the onus on the Applicant for her application is not as high.[31] The judge in this case presided over the remainder of the proceedings, having previously heard the initial days of the trial in 2014.

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[19] JJPs are not required to record their reasons for dismissing an application in writing. Instead, they must now provide their reasons orally, meaning a hearing transcript to understand the rationale behind a decision must be obtained.
[20] *Ibid* at para 18.
[21] *Ibid* at para 40.
[22] *Ibid* at para 4.
[23] *Supra* note 13 at para 5.
[24] *Ibid* at para 7.
[25] *Ibid* at para 8.
[26] *Ibid* at para 8.
[27] *Ibid* at para 9.
[28] *Ibid* at para 22.
[29] *The Court of King's Bench Act*, CCSM c C280 at s 5.01 as it appeared on 16 January 2015.
[30] *Supra* note 13 at para 13.
[31] *Ibid* at para 15.

Prevention Order Application

At the final hearing, the Applicant applied for a Prevention Order, due to the violence and harassment she alleged the Respondent had subjected her to. Whereas, the Respondent applied to have the original Protection Order of December 17, 2013, set aside.[32]

Applicant's Presentation of Evidence

During the hearing, the evidence that the Applicant gave is as follows:

The Applicant testified that she and her family members received numerous threatening emails and texts from the Respondent during their separation, causing her significant stress and fear.[33] Despite her requests for him to cease contact, the Respondent continued to harass her.[34] Copies of some email and text messages were admitted into evidence that confirmed this behaviour.[35] The Applicant provided testimony regarding multiple incidents of physical violence perpetrated by the Respondent, instances of verbally abusive conduct during the exchange of the child, and repeated occasions where the Respondent was observed driving past the Applicant's residence.[36] One such incident involved the Applicant attempting to take their shared child and leave the Respondent. The Respondent forcibly took her car keys, pushed her, and physically prevented her from picking up the sleeping child. He then grabbed the Applicant by the forearms and pushed her a second time, waking up the child in the process. The child, visibly upset and reaching out to the Applicant, was picked up by the Respondent and forcibly held in his arms. Despite the child's distress and gestures to be handed over to the Applicant, the Respondent refused to do so until the Applicant reassured him that she would not leave him.[37] She also stated a consistent issue in their relationship was the Respondent's use of marijuana and his frequent absence from the home.[38]

Respondent's Presentation of Evidence

The Respondent's evidence was as follows:

He denied ever becoming physically violent with the Applicant; however, on cross-examination, he admitted to attending the Applicant's home uninvited on more than one occasion and phoning the home multiple times.[39] He further disclosed that any guilty pleas entered in relation to criminal charges were the result of ineffective legal counsel and asserted that he did not, in fact, commit the offences to which he pled guilty. He admitted to an incident of

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[32] *Supra* note 1 at para 1.
[33] *Ibid* at para 16.
[34] *Ibid*.
[35] *Ibid* at para 16.
[36] *Ibid* at para 15.
[37] *Ibid* at para 26.
[38] *Ibid* at para 24.
[39] *Ibid* at para 66.

speeding while his young son was a passenger in the vehicle and to leaving him locked in a truck outside while he and the Applicant were inside the home, engaged in an argument.[40]

Issues

Since the judge granted leave for both parties to conduct their respective applications at this one hearing, the issues arising before this judge are twofold.

1) Did Mr. Bulloch demonstrate, on a balance of probabilities, that the Protection Order should be set aside?[41]
2) Did Ms. Lafreniere demonstrate, on a balance of probabilities, that Mr. Bulloch has stalked her and/or subjected her and the children to domestic violence? If so, is it appropriate to grant a Prevention Order to her and her children?[42]

Analysis of the Issues

The first issue must be analyzed based on the Respondent's evidence. The Court found the Respondent to be an unreliable witness, finding the Applicant's evidence more credible.[43] This determination was influenced by the Respondent's repeated dishonesty, including his attempt to evade a court-ordered drug test by shaving all body hair to prevent the collection of hair follicles. The Court also noted his dishonesty towards the Court in his criminal proceedings and towards his criminal lawyer, his deception about his car accident towards all parties involved in the proceedings, including the presiding judge.[44] It is difficult to believe the evidence of someone who is continuously caught lying during their testimony. For these reasons, it is obvious why the judge chose not to accept his evidence on a balance of probabilities. Further, the material evidence the Respondent admitted to, would grant the need for a Protection Order to protect the Applicant from the Respondent.

Secondly, to grant a Prevention Order, the Court must be satisfied that the Respondent has either stalked the Applicant or subjected them to domestic abuse. As defined in the *Act*, stalking is characterized as repeated conduct, without lawful justification, that the perpetrator knows or ought to know would cause the victim to fear for their safety.[45]

In this case, the Court found that the Respondent followed the Applicant from place to place and continued to send unwanted emails, text messages, and communications through third parties, despite her clear efforts to stop the contact. As mentioned previously, the Applicant even submitted a text message in evidence in which the Respondent explicitly acknowledged this behaviour. This demonstrates that he knew his behaviour was inappropriate, and it would

[40] *The Domestic Violence and Stalking Act*, CCSM c D93 s 12 (2).
[41] *Ibid* at s 14 (1).
[42] *Supra* note 1 at para 114.
[43] *Ibid* at para 119.
[44] Supra note 37 at s 2 (2).
[45] *Ibid* at s 2 (1.1).

cause her fear. Despite acknowledging the improper behaviour, objectively, one ought to know that repeatedly sending messages and emails to both an ex-romantic partner and her family is inappropriate. Moreover, if the ex-partner is not responding and is blocking and preventing more messages from being sent, this should trigger a party to recognize that their behaviour is unwanted. Continuously pursuing communication when the other party is clearly against it warrants that the perpetrator knows that their behaviour is unwanted and is likely causing some discomfort, at the very least for the receiving party.

The *Act* also defines domestic violence to include intentional, reckless, or threatened acts or omissions that cause or reasonably instill fear of bodily harm or property damage, as well as conduct that constitutes psychological or emotional abuse.[46] The Court found that the Respondent had physically assaulted the Applicant, noting visible bruising and a pattern of threats and intimidation during their relationship and their separation periods.[47] Further, he had pleaded guilty to criminal charges alleging that he had assaulted her.[48] There was some indisputable evidence regarding the physical violence that the Applicant faced at the hands of the Respondent. Additionally, there was evidence of the child facing some level of abuse from the Respondent; however, due to an inconclusive report from the investigating social worker, the Court was unable to make a finding against the Respondent in this matter.[49] Taking into account all of the evidence that the Applicant provided, and considering that the making of a Prevention Order is discretionary, the Court's findings supported the conclusion that the Applicant's fear for her safety was reasonable and justified the issuance of a Prevention Order.

What Did the Court Ultimately Do?

The Court found the Applicant's testimony credible and supported by corroborating witnesses. It determined that there was sufficient evidence of the Respondent's threatening behaviour, justifying the issuance of the Prevention Order.

The Court set aside the existing Protection Order and replaced it with an indefinite-duration Prevention Order. The Court found satisfactory evidence to include the Applicant's first child in the order; however, it could not justify granting the Prevention Order against the parties' mutual child.[50]

The terms of the Prevention Order strictly limited the Respondent's contact with the Applicant.[51] Communication was confined to matters relating to their child and was to take place solely in writing, using a bound communication book exchanged with the child's belongings during custody transitions.[52] Under no circumstances, including medical emergencies, was the Respondent permitted to

[46] *Supra* note 1 at para 132.
[47] *Ibid* at para 69.
[48] *Ibid* at para 96.
[49] *Ibid* at para 143.
[50] *Ibid* at para 145.
[51] *Ibid*.
[52] *Ibid*.
[53] *Ibid*.

call the Applicant.[53] Instead, he was directed to contact her parents or, if absolutely necessary, send a text message or email to the Applicant.[54] The order also prohibited the Respondent from attending the Applicant's residence, following her, or appearing at any location she or her first child is attending.[55] These conditions reflect the Court's clear message that domestic violence and stalking are taken seriously. The judgment highlights that a serious injury or explicit threat is not a prerequisite for the issuance of such orders. Rather, proactive intervention is seen as essential in preventing the escalation of domestic violence.

Concluding Remarks

This case underscores the importance of presenting clear and compelling evidence of threat or harm in family law matters when seeking Protection Orders. Ms. Lafreniere was stuck in lengthy litigation for a period of four years. Had she been successful in her initial attempt to obtain a Protection Order in 2011, it might have mitigated the escalation of the conflict that followed. However, the reasons for the denial of her first two applications for a Protection Order are not available publicly, leaving uncertainty as to the basis for those decisions. In many cases, Protection Orders are denied on the grounds that there is insufficient evidence demonstrating that the danger to the Applicant is imminent. This occurs even when it is acknowledged that the Applicant is a victim of domestic violence. The current legislative framework restricts the authority of Justice of the Peace, permitting them to grant Protection Orders only where the threat is both clear and immediate. This narrow interpretation fails to account for the complex and often escalating nature of abusive relationships. As a result, the system inherently places victims at continued risk. Addressing this systemic shortcoming requires expanding the statutory discretion afforded to a Justice of the Peace, enabling them to issue Protection Orders based on a broader assessment of ongoing risk based on past instances of violence or the threat of violence, rather than solely on immediate danger.

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[54] *Ibid*.
[55] *Ibid*.