



UNIFORM RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS ACT

- Summary -

The Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act provides for the enforcement of domestic violence protection orders issued by Canadian courts. Reflecting the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against victims of domestic violence. Many states enacted legislation recognizing the domestic violence orders of sister states, and in 2002, the Uniform Law Commission (ULC) approved the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA), encouraging states to recognize and enforce the domestic violence orders of other states. In 2011, the Uniform Law Conference of Canada (ULCC) approved the Uniform Enforcement of Canadian Judgments and Decrees Act (UECJDA), which provides for the recognition of foreign protection orders – including those of the United States – unless the foreign state of origin has been expressly excluded from the provisions of the act. By this act, enacting states accord similar recognition to protection orders from Canada.

This act draws from the UIEDVPOA and the UECJDA in its recognition and enforcement of Canadian domestic violence protection orders. The two Acts are similar in several important respects. Both recognize domestic violence protection orders without requiring that the party seeking enforcement register the foreign order. Likewise, both provide that a law enforcement agency or court respect a facially valid order until successfully challenged after the request for emergency action has passed.

The UIEDVPOA and UECJDA differ in other respects, with the UECJDA providing more narrow recognition and enforcement of protection orders from other countries than the UIEDVPOA provides for orders from sister states. The UIEDVPOA recognizes all parts of the sister state protection order, including parts of the order relating to custody and visitation. This act, like the UECJDA, pursues the narrower goal of addressing the emergency of threatened violence by recognizing and enforcing only the parts of the Canadian domestic violence protection order requiring no contact directly or indirectly with a protected individual. Other Acts and conventions deal with issues of custody between countries.

This act follows the UECJDA and its more limited approach on other issues. Because of the limits on enforcing the criminal orders of another country, this act enforces only Canadian civil domestic violence orders. While the UIEDVPOA's definition of protection orders includes certain criminal orders, such as anti-stalking orders, other sections of the UIEDVPOA recognize the problems inherent in enforcing the criminal law of a sister state. The international setting only multiplies the issues; therefore, the act recognizes and enforces only Canadian civil domestic violence protection orders.

The act also limits recognition of Canadian domestic violence protection orders to those orders that issue from courts. The UIEDVPOA recognizes protection orders issued not just by courts, but also by tribunals, including an "agency...or other entity authorized by law to issue or modify a protection order." Following the lead of the UECJDA, this act provides for narrower recognition, limiting the recognition of Canadian domestic violence protection orders to civil orders issued by Canadian courts.

The act defines protection orders more broadly than the UIEDVPOA only in one way. The UIEDVPOA limits recognition to orders “issued... under the domestic-violence [or] family-violence, or anti-stalking laws” of the state that issued the order. In this way, the act excludes orders that issue under more general statutes. The UECJDA has no such limitation, providing for the recognition of foreign protection orders “made by a court of a foreign state.” The Canadian drafters concluded that specifying the type of statute authorizing the order was unnecessary in light of other limitations. Since this act recognizes and enforces only direct or indirect no-contact provisions in a civil order, further specificity seemed unnecessary and unwise. In light of the emergency setting in which enforcement questions arise, this complicated determination of Canadian statutory authority could defeat the purpose of the act.

The act also provides uniform procedures for the cross-border enforcement of Canadian domestic violence protection orders. The act envisions that the enforcement of Canadian domestic violence protection orders will require law enforcement officers of enforcing states to rely on probable cause judgments that a valid order exists and has been violated. The act, however, provides that if a protected individual can provide direct proof of the existence of a facially valid order, for example, by presenting a paper copy or accessing an electronic registry, the copy or registry conclusively establishes probable cause. If there is no such proof, the act nevertheless requires enforcement if officers, relying on the totality of the circumstances, determine that there is probable cause to believe that a valid protection order exists and has been violated. The individual against whom the order is enforced will have sufficient opportunity to demonstrate that the order is invalid if and when the case is brought before the enforcing tribunal. Law enforcement officers, as well as other government agents, will be encouraged to rely on probable cause judgments by the act’s inclusion of an immunity provision, protecting agents of the government acting in good faith.

The act does not require individuals seeking enforcement of a protection order to register or file the order with the enforcing state. It does, however, include an optional registration process. This process permits individuals to register a Canadian domestic violence protection order by presenting a copy of the order to a responsible state agency or any state officer or agency. The issuing Canadian court must certify the copy presented for registration. The purpose of these procedures is to make it as easy as possible for the protected individual to register the protection order and facilitate its enforcement.