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## **Interjurisdictional Enforcement of Protection Orders and the Possibility of Conflicts: The Need for Reform in Alberta**

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**Case Commented On:** *DH v TH*, [2018 ABQB 147 \(CanLII\)](#)

Most provinces and territories in Canada now have legislation providing for emergency protection orders in cases of family violence. What we do not have in Alberta is a clear mechanism that allows for the recognition and enforcement of a protection order granted in another jurisdiction, nor a mechanism for dealing with conflicting orders.

In a recent Alberta case, *DH v TH*, [2018 ABQB 147 \(CanLII\)](#), Justice Lee faced a situation where a woman had obtained an ex parte protection order against her husband in British Columbia under the *Family Law Act*, [SBC 2011, c 25](#). At the time, the wife was living in BC and her husband was travelling back and forth between Edmonton and BC for work. After the order was granted, the husband moved to Edmonton to live with his sister. He was eventually served with the BC order in Alberta but missed the date for the hearing into the extension of that order, which resulted in a three-year BC protection order being granted against him. In the meantime, the wife received a transfer of employment to Edmonton and moved there to live with her parents. The husband apparently learned about the extension of the BC order when he went to an Edmonton daycare “where he believed the child of the marriage was” (at para 6). Later that day, he was served with an emergency protection order (EPO) obtained ex parte by his wife under Alberta’s *Protection Against Family Violence Act*, [RSA 2000, c P-27](#) (PAFVA).

When the matter came before the Court of Queen’s Bench in Alberta for a review of the EPO, as required by s 3 of the PAFVA, it was set for a hearing to allow both parties to give evidence. The husband asked the Court to deal with both the BC and Alberta orders at that time, making the argument that if the Alberta order was vacated, he would still face the stigma of the BC order (at para 8). However, counsel for the husband and wife agreed that the BC protection order was not enforceable in Alberta, and Justice Lee found that he did not have jurisdiction to deal with the BC order. He noted the importance of avoiding the “potential for individuals to go to other provinces to have prior orders that they did not defend or did not like, set aside” (at para 14). Although the appeal period for the BC protection order had lapsed, Justice Lee raised the possibility that the husband could attempt to have the BC order varied if the Alberta EPO was vacated after the hearing in this province (at para 12).

BC’s *Family Law Act* does deal with the enforceability of protection orders made in other jurisdictions in s 191:

**191** The *Enforcement of Canadian Judgments and Decrees Act* applies to an order, made by a court in another jurisdiction of Canada, that is similar to an order made under this Part.

Alberta does not have a similar provision in its PAFVA. We do have the *Extra-Provincial Enforcement of Custody Orders Act*, [RSA 2000, c E-14](#), which empowers courts in this province, on application, to “enforce ... and make any orders it considers necessary to give effect to [an extra-provincial] custody order as if the custody order had been made by the court” (s 2). This legislation could serve as a model for the enforceability of protection orders from other provinces, as could BC’s *Family Law Act*.

In *DH v TH*, Justice Lee also remarked upon the fact that other proceedings were before the courts in both jurisdictions – a parenting application brought by the husband under Alberta’s *Family Law Act*, [SA 2003, c F-4.5](#), and the husband’s action to place a lien on the matrimonial home under BC’s *Family Law Act*.

This aspect of the case shows how complicated the legal context can be in domestic violence cases, especially those crossing borders. As I noted in a [previous post](#), no-contact orders can be granted not just under legislation dealing specifically with family violence, but also under general family legislation. For example, Alberta’s *Family Law Act* gives courts jurisdiction to grant orders restraining a spouse from attending at or near the family home (s 68). No contact orders can also be made under the *Criminal Code*, RSC 1985, c C-46. Conflicting no contact orders granted in the same or a different jurisdiction are thus a real possibility and can present safety issues for victims of domestic violence just as the non-enforceability of orders granted in other jurisdictions can.

BC’s *Family Law Act* addresses the possibility of conflicts in s 189:

- 189(1)** In this section, “protection order” means any of the following orders:
- (a) an order made under this Part;
  - (b) an order, made under the *Criminal Code*, that restricts a person from contacting or communicating with another person;
  - (c) an order, made by a court in British Columbia or another jurisdiction in Canada, that is similar in nature to an order made under this Part.
- (2) If there is a conflict or an inconsistency between a protection order and an order made under a Part of this Act other than this Part, the other order is suspended, to the extent of the conflict or inconsistency, until
- (a) either the other order or the protection order is varied in such a way that the conflict or inconsistency is eliminated, or
  - (b) the protection order is terminated.

While there was no evidence of a conflict between orders in the *DH v TH* case, it nevertheless highlights another gap in the PAFVA that should be addressed by the legislature.

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