ANALYSIS OF EMERGENCY PROTECTION ORDER HEARINGS IN THE NWT

AN ANALYSIS AND REPORT COMMISSIONED BY THE GNWT

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ABSTRACT

In 2005 the NWT passed the Prevention Against Family Violence Act (PAFVA) which, among other stipulations, allows people who have been subjected to family violence to apply for an Emergency Protection Order (EPO). This progressive response moves away from after-the-fact interventions, including complex and costly legal proceedings in which (primarily) men are convicted of violent crimes against family members. The GNWT commissioned the present study of recorded hearings between the Court and EPO Applicants, as part of its larger review of initiatives pursuant to PAFVA. This report details our analysis of the EPO transcripts and provides the basis for recommendations.

PREAMBLE

Emergency Protection Orders are part of an orchestrated social response by the GNWT to family violence. Direct service experience and several lines of research show that the quality of social responses given to victims is perhaps the single best predictor of the level of victim distress and the extent of victim involvement with authorities. Victims who receive negative social responses tend to experience more intense and lasting distress than those who receive positive social responses, and are less likely to disclose violence to authorities. Victims who receive positive social responses are more likely to seek help, cooperate with authorities, escape the violence, and recover more fully in the short and long term.

Emergency Protection Orders are a clearly defined and readily available mechanism victims can use to protect themselves and their children against impending or further violence or abuse. Importantly, the EPO legislation promises to be truly preventative. That is, the act allows the state to take action to increase the safety of victims prior to the perpetration of

assaults or other forms of violence. Not only does the act allow for the GNWT to use its authority pre-emptively, it also allows for the state's authority to be used in a manner that is accountable and tailored to specific cases. Therefore, the EPO process should reduce the need for a host of after-the-fact interventions and services, which include criminal proceedings against (primarily) men for acts of violence, and a host of related interventions and services.

The Act (PAFVA) recognizes that violence against family members includes threats or actual damage to property, threats or acts to deprive the family of economic necessities, and threats or acts of physical violence. Importantly, an EPO can be granted when the Applicant fears the Respondent will be violent or abusive, though the Applicant is required to describe in detail the events that form the basis of his or her fear. Thus, the Act gives the Court broad scope to obtain clear and coherent descriptions of violence and related circumstances on which to base its decisions.

To increase the Applicant's safety, the Court can prohibit the Respondent from communicating with or contacting the Applicant, direct that the Respondent not convert or damage property or assets and direct the Respondent to surrender weapons. The Court can give the Applicant temporary, exclusive occupation of any joint residences and temporary possession of property Orders are binding once the Respondent has received notice or substitution of service has been completed. Breeches of an EPO order are punishable by summary conviction.

The decision to grant or deny an application for an EPO must be based on evidence obtained in the hearing, which consists primarily of the Applicant's descriptions of violence,

abuse, or intimidation by the Respondent. The Court may also draw on related facts, such as a record of previous EPO applications, RCMP involvement, or the testimony of a third party, typically a transition house worker attending to support the Applicant and assist the Court.

The EPO hearing is audio recorded and transcribed. The transcripts are valuable because they record the charged moment in which the power of the state meets some of the most vulnerable members of society. Analysis of EPO transcripts allows us to examine how the GNWT is discharging its duty to address family violence, arguably the most serious and persistent social problem in the territory. In terms of the present study, the EPO transcripts allowed us to identify already existing effective practice, aspects of practice that can be improved, and how Applicants orient to and participate in the process.

Periodic evaluation of the EPO process is required as a matter of democratic oversight, to ensure, that Applicants are receiving the most judicious responses possible within the Act, and that Respondent's rights are adequately protected. The Department of Justice reviewed the first six months of implementing the EPO legislation and made recommendations to improve access to and protection under the PAFVA. In this study, we examined a mostly random selection of EPO transcripts, in order to more closely look at the social responses of the Court to victims of violence in emergency situations.

THE EPO PROCESS IN CONTEXT

Procedural Demands

The Court must follow set procedures attendant to a legal hearing, obtain accurate information and, on the basis of that information and in accordance with the provisions of the Act, render a decision to grant or deny the application. Moreover, the Court must accomplish all of the above in a way that engenders a perception of fairness and is likely to be confirmed (i.e., not over-turned) on review. The sequence of procedures evident in the transcripts we examined is as follows:

- Affirmation/oath
- Informed consent, explanation of process
- Personal information about Applicant and Respondent
- Relationship of Applicant and Respondent
- Children, parentage, location
- Current living arrangement
- Current location of Applicant and Respondent, level of safety
- Reason for EPO application
- Descriptions of relevant events, including violence, threats, intimidation, fear
- Deliver decision and reasons
- Clarify stipulations, ensure understanding
- Suggestion further action, respond to questions
- Closure

In essence, the EPO hearing is a highly structured procedural conversation, managed by the Court with the participation of the Applicant.

Typically, the preliminary phase of the hearing ends with an exchange about the location of the Applicant and Respondent, the presence of children, and the current level of safety. The Court then asks the Applicant to present reasons for making an EPO application. At this point, the Court becomes involved with the Applicant in developing a description of the relevant events. We suggest that clear and coherent descriptions of violence consist of the following:

- The Respondent's actions and the Applicant's responses to those actions, in specific settings.
- A sequence of actions and responses over time.
- Language that captures the nature and severity of the Respondent's actions: For example, the unilateral nature of violence.
- Language that captures the nature and situational logic of the Applicant's responses: For example, the Applicant's level of fear and forms of resistance.

The Court assumes rightly that the Applicant can supply the relevant information needed to make a decision in an EPO hearing. Nevertheless, the Applicant must put this information into words and arrange it into an understandable sequence of events while responding to the Court. Thus, the descriptions that emerge are achieved interactionally through a process that places demands on both the Applicant and the Court.

Interpersonal Demands

The power of the Court is enormous in the EPO process. The Court takes the Applicant through set procedures, directs the conversation, reserves the right to ask questions, evaluates the credibility of the Applicant and her responses, and delivers a decision that is

beyond immediate review. The decisions of the Court have life and death implications for the Applicant, who seeks the protection and benefit of the law while in dire need. The Applicant must appear credible and respectful of the Court while working to impart key information and obtain the desired outcome, an EPO. And she must do so even if she has received negative social responses from authorities previously and is therefore cautious with the Court.

In these circumstances, the interpersonal aspects of the EPO hearing take on great significance. It can be challenging for the Court to attend fully to interpersonal demands because the procedural demands of managing the hearing and administering the law are extensive. For example, the Court must ensure that witnesses are sworn or affirmed and key aspects of the law are considered, while taking notes and engaging in conversation with the Applicant. Hearings conducted by phone are interpersonally more challenging due to the lack of information (e.g., head nods, hand gestures, facial expressions, eye-contact) that is available in comparison to face-to-face hearings. In phone hearings, both parties must rely more heavily on spoken words and intonation. Moreover, due to the content of the conversation, the Applicant may respond with strong emotions and become pre-occupied with intrusive thoughts or memories.

Research shows that the interpersonal demands of legal proceedings are important for two reasons. First, individuals who become involved in the justice system tend to evaluate both procedural fairness and interpersonal fairness. Procedural fairness is achieved when the procedures are, and are perceived to be logical, consistent with the law, and effective. Interpersonal fairness is achieved when the individual is, and perceived him or herself to be, treated with dignity and given a full hearing. Individuals who believe they have been treated unfairly, procedurally or interpersonally, are less likely to cooperate with police and other

justice officials. Thus, the Court must carefully balance procedural and interpersonal demands.

Second, the Applicant, who is asked to relay complex and upsetting actions by the Respondent, needs an interested audience. Speakers provide better quality information when listeners provide responses that indicate interest and understanding. The EPO process is no different in this respect. The quality of descriptions developed in the EPO hearing hinges substantially on the quality of the interpersonal process between the Court and the Applicant. While the Court directs the Applicant to specific topics (e.g., previous violence, current danger, presence of fear) for procedural reasons, it also shifts between exchange formats (e.g., question and answer, statement and evaluation, clarification requests and replies) and uses a variety of conversational devices (e.g., shift markers, continuers, indicators of gist and understanding, tonal shifts, repair) to develop the best evidence possible.

Due to the power of the Court and the implications of its decision, the Applicant will be alert to virtually every interpersonal nuance. Every pause, question, topic change, and comment is pregnant with meaning - and possible misunderstanding. For example, there are often long silences as the Court records information. If the Court does not explain these silences, the Applicant will likely interpret them in keeping with what such pauses would mean in normal conversations, namely, disbelief or disinterest. To avoid engendering these judgments, the Applicant may restrict the information she provides to the Court. In such cases, the result is an incomplete or incoherent description, leaving the Court with poor information on which to base its decision.

Balancing Procedural and Interpersonal Demands in the EPO Hearing

We thus focus our analysis primarily on how the Court and Applicant interact verbally; on how the Court works to obtain clear and coherent descriptions of violence, the threat of violence, or fear of violence, and how the Applicant works to respond to the Court and obtain the EPO. In short, we concentrate on the interpersonal process through which the Court works to achieve its procedural objectives.

ANALYSIS and FINDINGS

Cases Analyzed

We analyzed 15 cases, between 2007 and 2009, where the Court granted the EPO. Initially, we selected 3 cases to give us some indication of how the Court and Applicant oriented to the procedural and interpersonal aspects of the interviews. All other cases (12) were randomly selected for analysis. All but one of the interviews was conducted by phone. In two cases, the Applicant spoke in her original language and translation was provided. All Applicants in our data set were female and all Respondents were male. In this respect, the cases we analyzed reflect the gendered nature of family violence. Consequently, we use primarily female pronouns to refer to Applicants and primarily male pronouns to refer to Respondents.

Treatment of Examples

We present a number of examples from EPO interviews to illustrate key issues. The issues we identify do not necessarily represent the data set as a whole, nor do they reflect individual competence or incompetence. Instead, they tend to reflect issues that occur in other settings, too, and at a broad social level across social classes, professions and various interpersonal relationships. To protect the privacy of individual Justices of the Peace, we do not identify the cases from which the examples are selected.

Summary of Findings

The EPO legislation is well conceptualized and well written, but may need some modification to deal with special circumstances, for instance, where the Applicant and

Respondent have not lived together or the Applicant is leaving the area. Any difficulties with the EPO hearing appear to be in its application, not its design. In many cases, the Court struggled to obtain clear and complete descriptions of violence or threat of violence from Applicants. Applicants showed that they were willing and able to provide the needed information. However, the Court sometimes focused on procedural demands to the detriment of interpersonal demands and sometimes developed problematic descriptions.

Below, we summarize the procedural goals of the EPO hearing, explain some of the mechanics of interpersonal interaction that are directly relevant to developing clear and complete descriptions of violence, the threat of violence, the presence of fear, and related social circumstances. We then present examples from the transcripts to illustrate key interpersonal practices used, or not used, by the Court. We also show how Applicants responded to the Court, in some cases working to present key information to obtain an EPO. We conclude with some comments on the EPO transcripts as a whole.

Our goal is to help the Court manage the interpersonal and procedural demands of EPO hearings to obtain clear and complete descriptions of violence as defined by the PAFVA. We identified more and less effective practices in virtually every transcript. This is not surprising given the multiple demands on the Court in the EPO hearing. We hope that the analysis presented here will help all parties reflect upon, and make best use of, the PAVFA that is now in force in the NWT.

ANALYTIC FRAMEWORK

The analytic framework we developed for this project is derived from our direct service work with victims and perpetrators and their families; our practice-based supervision of professionals working to address the problem of violence in diverse criminal justice and social service settings; our consulting work with numerous agencies in Canada and abroad; and our research on social responses to violent crimes. In the course of this work, we have closely examined many interviews and documents relating to, and developed in, criminal justice and social service practice. We have come to appreciate the extraordinary significance of the small nuances of conversation, and the importance of language, especially in cases of violence.

Accordingly, we have drawn on research methods that were developed to examine social interaction and language in use; micro-analysis, conversation analysis, and critical discourse analysis. Ideologically, our position can best be characterized as human rights oriented, feminist-informed, inductive, and response-based. We will be happy to answer any questions on the design and content of this study, on request. Below is a list of the analytic categories we developed in the course of the study.

MANAGING THE INTERPERSONAL PROCESS

Explaining the Process

Asking the Applicant for a Clear and Coherent Description

Keeping the Process on Track

Listener Responses

MANAGING THE INTERPERSONAL PROCESS

Explaining the Process

It is the responsibility of the Court to explain the EPO hearing process so that the Applicant understands her role and can provide evidence as efficiently as possible. The Court sometimes explained the process thoroughly, over several turns, as in the following example.

> **C: Okay. First thing I'd like to do is inform you that the – than [sic] an emergency protection order can only be granted if there is an emergency by reason of family violence. Do you understand this?**
>
> **A: Yes.**
>
> **C: Okay. Then, basically what will happen at this point, the basic process, is that I will ask you, the Applicant, for information about yourself first, and then I'll swear you in. Then I'll ask for information from the designated representative. After that I'll come back to the Applicant and I'll ask you for information about the Respondent. That's the person you're making this application against. Okay?**
>
> **A: Okay.**
>
> **C: Once I have all that information, then we'll get into what it is that has brought you here today to make this application, okay?**
>
> **A: Okay.**
>
> **C: Okay. So, first, for the record, can I get your name, please?**

Shorter comments also aid the hearing. Here are several examples:

> **C: We've got lots of time. We can take your time with this. There's no rush. Okay?**

> **C: And I'm going to ask that [advocate] not interrupt your evidence, unless you find . . . that she's missed something that may have been brought up to you earlier.**

In these examples, the Court appropriately referred to its own actions or joint actions with the Applicant in a manner that would tend to convey respect and, ideally, reduce any sense of fear or intimidation the Applicant might be feeling.

Frequently, the speed with which the Applicant talks creates difficulty for the Court, which must also record information, proceed through check-lists, and so on. The Court then interrupts the Applicant or responds slowly to the Applicant so that it can complete procedural activities:

> **C: I'm just making notes as we go here, as well. So, if I seem slow, it's because my writing is terrible.**
>
> **C: Okay. Give me a quick second here to write my notes. Okay. Have any child protection applications. . . .**
>
> **C: Alright. And please bear with me. We have a check-list, so you'll hear pages being flipped and that's just from me moving my check-list around. Okay.**

These examples are note worthy because they show how the Court slowed the hearing in a way that carefully preserved a respectful relationship with the Applicant. The Court clearly conveyed in each case that it needed the delay for its own purposes, and was not criticizing the Applicant. In some cases, the Court even apologized to the Applicant for its slow responses, strongly undercutting any sense that the Applicant was not giving her testimony properly. Such careful management of interpersonal and procedural demands helps to facilitate the gathering of evidence and the hearing itself.

The Applicant is more likely to give evidence too quickly or at the wrong time if the Court does not explain the hearing process thoroughly. Taking the time to do so initially is highly efficient for the Court procedurally as it obviates the need to do so later, with commands that the Applicant might construe as critical or corrective. For example:

C: slow down . . .

C: Okay, let's . . . let's . . . let's just slow down a bit.

The risk here is that the Applicant will with hold information to ensure she does not present information in the wrong manner.

In telephone hearings, the Court must sometimes ensure that the Applicant is in a position to be able to provide information. For example, in the transcript below, the Court first organizes the affirmation, makes sure the Applicant can "talk freely", reassures the Applicant that the background noise will not disrupt the hearing, and then alerts the Applicant to the types of back-ground questions it will to ask.

C: Okay. So, at this point then Ms. X. I'm going to ask you to take an affirmation of oath for the evidence you're about to give.

A: Okay.

C: Do you solemnly affirm that the evidence to be given by you in this application shall be the truth, the whole truth, and nothing but the truth?

A: I do.

C: Okay. Thank you. Now, are you in a situation where you're going to be able to talk freely?

A: Yes, I am.

C: Okay. 'Cause it's rather noisy in the background.

A: Yeah. I have two kids in a very small unit…

C: Okay.

A: ….right now.

C: That's fair enough. We've got lots of time. We can take your time with this. There's no rush. Okay?

A: Okay.

C: Having been sworn in, I'm going to ask you some question, starting with some background information.

A: Sure.

C: And I'm going to ask that Ms. Y [designated representative] not interrupt your evidence, unless you find, Ms Y that she's missed something that may have been brought up to you earlier.

Ms Y: Okay.

C: Okay? What would be the full name of the Respondent, the person you're making the application against.

Clear descriptions of the hearing as early as possible aid the EPO process procedurally and interpersonally. The result in most cases is better evidence.

Asking the Applicant for a Clear and Coherent Description

After the Court completes the preliminary procedures and explanations, as above, it shifts to the business of obtaining evidence from the Applicant. Typically, the Court begins this process by asking the Applicant to explain the reasons for the EPO application. This is an important point in the hearing because, by the way the Court phrases its initial question and immediate follow-up questions, the Court directs the Applicant to talk about certain topics and not others.

In some cases, the Court asked the Applicant "why" she was applying for an EPO. The question "why" puts the focus on the Applicant's mental processes, her thoughts or feelings or intentions: The Applicant must explicate her decision-making. However, for the Applicant, the Respondent's actions are the central concern. She thus faces a disjuncture between her own concerns and those of the Court. Here is an example in which the Applicant addresses both concerns.

> **C: Okay. Alright, now, what I'm going to ask you now, Ms. X, I want you to explain to the Court why you have come to the RCMP and have applied for, and are applying for an Emergency Protection Order.**
>
> **A: I'm afraid of –for my life. I don't know what my husband is doing. He's been having an affair for 10 months. And I didn't know that he was having an affair 'til two weeks ago. And then he came home, last week on Friday, he was apologizing. He was sorry for everything he's done. He's not going to hurt me. I let him back into the house. And then about two days after I let him back into the house, he said the only reason why he told me what he had to tell me was 'cause he just wanted to get back into the house and then he's going to get rid of me. And there'll be nothing left of me by the time he's done with me.**

C: "Okay. Now...now, you're saying that you're reacting to what he did on Tuesday.

A: "well, see this happened on Tuesday. And then Wednesday, he came home, [indistinct] 1:30 in the morning, and he just has this real stinky attitude towards me and my son. He even told my son, "you ever try to stand up to me, I'll take you down." He even told that to my son. [Pause] and I told him just to leave the house, I'm scared. I don't know what he's going to do 'cause [the Respondent] is so angry, and I don't know what he's telling [her son] behind my back. 'Cause he's not telling me very much, but I can feel the anger from him. I know he's angry and . . . he's got a really, really short temper. I know it; I lived with him for 12 years.

The Applicant first refers to what she feels, "**I'm afraid**", and knows, "**I don't know**", both mental processes, as if to comply with the topic set by the Court. She then shifts focus and describes a number of the Respondent's actions in an organized sequence, from "**10 months**" ago to "**last Friday**" to "**two days after**". It is these actions by the Respondent that are her primary concern and reason for her EPO application. However, having been directed by the Court to talk about her decision-making, the Applicant is not able to supply enough detail about the Respondent's actions needed to understand her thoughts and emotions as appropriate and therefore credible.

The Court then interjects with a question about the time frame, "**you're reacting to what he did on Tuesday**", which returns the focus to, and questions the validity of, the Applicant's decision-making. Thus, before getting to what the Respondent did, the Applicant must first deal with the embedded position that that her application for an EPO was delayed and so calls into question her credibility. The Applicant first indicates she intends to explain with, "**well, see**", and picks up the time frame to satisfy the Court. She then returns to the

actions of the Respondent and alternates with her thoughts and feelings, to explicate her decision-making: "**I fear**", "**I don't know**", "**I don't know**", "**I can feel**", "**I know**", "**I know it**". Notably, she concludes by telling the Court that her thoughts and feelings are well founded with, "**I lived with him for 12 years**", as if to rebut the doubts expressed by the Court.

Arguably, the question "**why**" reverses the order in which the evidence should be received. When the Court asked first for descriptions of the Respondent's actions, the Applicant tended to provide more detailed descriptions, giving the Court more information to work with. Here, for example, the Court puts the focus on events in context and suggests that the application would ensue logically as a response to those events.

> **C: All right then. Can you please tell me in your own words what happened to make you apply for an emergency protection order today?**
>
> **A: I'm just having a rough time right now. He's—like, I'm trying to quit drinking, I never drank for two months, I'm trying to, like better myself and (inaudible) full time job. Getting violent and (inaudible). I'm scared and I'm not (few words unclear) he ripped my phone, I can't phone anybody, and he's pushing me around here and had to run out of here with no shoes on or anything and I told him I was going phone the cops (inaudible), like that. And keep on phoning and I locked myself in here. I – I put duct tape – duct tape around my door so he can't turn the doorknob because he has a key. I'm scared, like, he might do something like put me in the hospital so, he's violent when he's drinking. That's about it (inaudible). This is the only way to get him out of my life or that he's not too – like I'll be friends with him but I don't want to have a relationship with him anymore.**
>
> **C: Okay.**

Notice, that while the Applicant does mention her fear, an internal state, she does so in the context of a detailed description of the Respondent's violent actions. Even with a somewhat vague and rambling description by the Applicant, made the more difficult by apparent audio problems, the Court is able to ascertain that the Respondent has been violent (e.g., "**getting violent**", "**pushing me around**" and has damaged property ("**he ripped my phone**"). The Applicant was forced to defend herself by stating that she would call the "cops", putting duct tape around the door "**so he can't turn the doorknob**". And she is "**scared**" that he will continue to be violent and that the violence will escalate to the extent that he would "**put [her] in the hospital**".

In cases where the Respondent has violated the Applicant repeatedly, it is useful to help the Applicant form a coherent presentation of the facts. Below, the Court directed the Applicant to give the past information first and then to talk about the current situation.

> **C: Okay. So, now I'm going to ask you to give the circumstances that bring you to the application. If there's history of violence or things that would be helpful for us to know, you can give that first. And then the immediate incident that creates an emergency for you. So, if there's any history - information of your relationship that would help, how long you've been together and if there'd been violence and that kind of thing.**

In this hearing, the opening question by the Court alerts the Applicant to the relevancy of all the Respondent's violence against her. The Applicant went on to give a complex description of the violence she had suffered. This description was formed collaboratively, so to speak, beginning with a skillfully phrased question about the developmental history of the violence, and thus became far more coherent then it might have otherwise been. The current violence

by the Respondent became visible as remarkably similar to past violence, and therefore as part of a larger pattern that warranted an EPO.

More typically, the Court asked the Applicant to begin by describing the most current violence:

> **C: Okay, I'm going to ask you to tell me about the incident that led to this application. And I'm not going to interrupt you. I just want you to tell me your story.**

When the most recent act of violence was clear and substantive, the Court was then in a position of immediately having enough evidence to justify an Emergency Protection Order. However, often Applicants seek Emergency Protection Orders in order to prevent an escalation of violence. In these situations, the current actions of the Respondent may seem to lack the level of risk required to grant an EPO. That is, if current actions by the Respondent are described in isolation, outside the larger pattern, the Court may not obtain the information needed to understand the level of threat signaled by those current actions. This problem is more likely to occur when the Court directs the Applicant to talk about an "**incident**". (We discuss use of the referent "incident" below.) In these cases, the Court needs a series of follow-ups to retrieve the information needed to accurately assess the threat faced by the Applicant.

Contextualized descriptions can also be encouraged by telling the Applicant where to begin and to describe events in sequence, as follows:

> **C: Sorry. I'm just … okay. At this time now, I'm going to ask if you would please tell me what happened. From the very present and gradually work back to the other incidences.**

In general, more open questions leave the Applicant free to describe all relevant aspects of the Respondent's actions, past and present. For example:

C: Please describe the circumstances that bring you to the application.

C: Tell me in your own words what happened to make you apply for an Emergency protection order today.

C: Okay, so what is it that's happened recently to bring you to make the application today?

Despite small differences in wording, all of these questions direct the Applicant to describe events, specifically the Respondent's actions, first and foremost.

Keeping the Process on Track

At times, the Applicant gives evidence when the Court is not yet ready, or so quickly that the Court cannot both listen effectively and record the evidence. When this occurs, it is important that the Court responds in a way that leaves the Applicant feeling informed and respected.

C: Who has legal custody, or has it been determined?

A: It's me and him, fifty-fifty.

C: Fifty-fifty. Is that something decided by the courts, or something the two of you agreed on yourselves?

A: Two of us agreed on.

C: Okay.

A: But I'm going to go through custody.

C: Okay. You're intending to apply for full custody?

A: Yes, 'cause—

C: Okay.

A: He's not signing the papers to neither my Mom or his Mom.

C: Okay, we'll get into that stuff in a bit here, okay?

A: Okay.

In this example, the Court skillfully provides three important responses. In the second to last line, the first "**Okay**" conveys that the Court understands the information the Applicant has presented. The next statement, "**we'll get into that stuff in a bit here**", directs the Applicant back to the data-gathering task that is the current procedural focus for the

Court. By using the collective noun, "**we'll**", the Court frames the shift as collaborative, not the sole responsibility of the Applicant. The last "**okay**", intoned as a question, seeks the Applicant's permission for this shift. As is typical when the matter is handled skillfully, the Applicant agrees and responds with "**okay**".

Listener Responses

While completing the preliminary business of explaining the hearing and obtaining required information, the Court begins to establish an interpersonal tone and show how it intends to talk and listen. As the Court hopes to obtain good evidence from the Applicant, in the form of clear and complete descriptions, it must provide listener responses that work efficiently to that end. The role of the listener is to show that he is listening, that is, tracking the speaker (generic listener responses) and understanding the implications of the information being provided (specific listener responses). Research shows that speakers respond in fractions of a second to very subtle listener responses. When the listener provides generic but not specific listener responses, the speaker tends to become awkward. Often, then, the speaker tries to re-state the information but in a less coherent fashion. In contrast, when the listener provides both generic and specific responses, the speaker tends to provide information in a more straight forward and coherent fashion.

The implication of this research for EPO hearings is significant. Given the social and personal importance of EPO hearings, in which the Court fulfills its Charter obligation to provide equal protection and benefit of the law, the Court must clearly communicate understanding. However, many hearings are conducted on the phone, where our usual non-verbal listener responses (i.e., head nods, eye contact, body posture, hand gestures) cannot be seen. The Court must provide both generic and specific listener responses but must do so through strictly verbal means. This requires conscious effort.

The Court must also combine generic and specific listener responses with other devices, such as shift markers (which we group here under listener responses), to help in its

management of the conversation. To illustrate how these features are used in context, we present a partly idealized sequence beginning with the same statement by the Applicant, concerning the location of a vehicle.

Generic Listener Responses:

Generic listener responses such as "Okay" indicate tracking and can work as a continuer, encouraging the speaker to continue speaking. They can also indicate interest, depending on intonation and emphasis.

A: The car was parked on the road.

C: Okay.

In the transcripts, the Court used a relatively restricted range of generic listener responses, which is not surprising since most of the EPO hearings were conducted over the phone, as mentioned. Here are some examples:

Okay

Mm-hmm

Yep

Yeah

The generic response most frequently used by the Court was "**Okay**".

Generic responses are generally not sufficient, however. The Court must show that it understands the implications of the evidence given by the Applicant and encourage her to continue to provide more evidence. Of course the Applicant closely monitors the listener

responses provided by the Court, to obtain some sense of direction, some clue about what line might be most advantageous or most aligned with the interests of the Court.

Specific Listener Responses:

Beyond what is indicated by generic listener responses, specific listener responses indicate deeper understanding and, depending on intonation and emphasis, interest in specific aspects of the information provided, or a particular response by the listener, such as surprise or curiosity. Specific listener responses often direct the Applicant to some feature of her evidence to develop further.

A: The car was parked on the road.

C: Okay. Parked on the road.

In this case, the Court indicates tracking, with "**okay**", and understanding, with a brief summary, "**parked on the road**". The Applicant in this case continued with a more detailed description.

In the transcripts, the word "okay" usually worked to convey tracking and an impending shift. Accordingly, "okay" typically preceded a specific listener response, a question or statement, giving the Applicant instructions, as in the following cases.

Okay. How did you get rid of him?

Okay. Has Social Services been involved with the family?

Okay. Any idea what kind of damages this would amount to dollar-wise?

Okay, there's no other injuries when he was throwing things at you?

Okay. Let the J.P. know.

Okay. Has he directly threatened or – or made motions towards the children?

Okay. Were you there?

These summaries are directive in that they indicate no further information is needed on a particular topic and notify the Applicant of a new topic or exchange.

Shift Markers

Beyond what is indicated by generic and specific listener responses, shift markers in the initial or final position, or in the immediately adjacent position, as in the example below, initiate a change in the talk. Such changes include topic shifts, a return to the listener the turn at talk, and a change in exchange structure (i.e., from Applicant talks and Court listens to Court questions and Applicant responds). In one case, the Applicant described how the Respondent damaged her car, stole papers, stole CDs, flattened her tires, and ripped her telephone wires from the wall. The Court then initiated the following exchange:

C: Okay. So basically he destroyed various types of your property.

A: Yeah.

C: Okay. Now, when you say that he was abusive in the past, how would you des – and presently – how would you describe this abuse?

Here, the Court indicates tracking with the generic listener response, **"Okay"**, then indicates an impending shift with **"So".** The long translation of these devices, used as they are adjacently in this case, would be, "I understand what you have said and you have said enough. Now I want to switch to a related topic and pose a question or summary". The Applicant accepts the summary with **"Yeah"** and allows the Court to reclaim the initiative. Thanks to this collaboration, the Court is able to initiate a further change, which it does with

"Okay", a generic listener response, followed immediately by **"Now . . . "**. The Court and Applicant efficiently achieve two shifts in focus with virtually no overt discussion.

Listener responses are critical for developing clear and accurate descriptions in virtually all conversations, but especially in the EPO hearings, where only the Applicant has the information that the Court needs. Women who have been violated by their spouses, and often re-victimized by negative social responses from criminal justice and other professionals, will carefully monitor the actions of the Court. Understandably, they may be inclined to interpret generic listener responses alone, without specific listener responses that show understanding or markers that warn of impending shifts, as the Court misunderstanding, being disinterested or indicating disbelief.

If small and rapid, listener responses are deceptively complex. On one level they indicate simple tracking or understanding. On another level, they also direct the Applicant to what the Court sees as information that is worthy of consideration for deciding if an EPO is warranted. Consequently, it is important that the Court avoid directing the Applicant away from giving clear and complete descriptions. In the following example, the Applicant stated that Respondent physically assaulted her, forcibly detained and confined her, put the children at risk, frightened her and the children, mistreated her property, threatened to kill her, and threatened to burn down her house and the women's shelter. The Court responded:

C: Okay, so, the incident tonight, the Respondent . . . okay, he threatened to hit you. But you escaped.

A: Yes.

Here the Court supplies generic (‘Okay”) and specific (“so”) listener responses but omits all of the Respondent’s violent actions except the comparatively minor threat to hit the Applicant. The Court then directs the Applicant to her escape. The Applicant does not direct the court back to the full description she provided earlier, but responds with one word, “Yes”. In this way, the Court’s listener responses hindered the Applicant’s efforts to describe the violence perpetrated by the Respondent.

Silence

During the EPO application process, the Court frequently takes notes and types forms. The performance of these menial but critical tasks sometimes results in silence (a long pause). However, the Applicant cannot see the Court and may not guess that the Court is required to take notes because the hearing is already recorded. In this context, there is a significant risk that the Applicant will interpret silence as a listener response indicating disbelief or disinterest. Such interpretations are in line with the typical meaning of silence when given as a listener response in ordinary conversation. To avert this problem, the Court must clarify the reason for the silence. Only one of the hearings we examined was conducted face-to-face, and so silences needed to be marked by the Court. In many transcripts, the Court told the Applicant of the beginning of the hearing to expect pauses as they recorded information, completed check lists, and the like. It would be a good practice for the Court to mark the pauses in which they are completing procedural tasks through out the hearing.

Topic Changes

The Court must keep track of a great deal of information during the EPO hearing; living arrangements, the presence and location of children, history of violence, previous reports to authorities, ownership of property and possessions. The two most important pieces of information the Court must record are that violence or the threat of violence occurred and that the Applicant fears currently for her safety. In the transcripts we examined, the Court sought information systematically, by overtly raising and pursuing hearing-relevant topics over stretches of talk (e.g., previous violence), and opportunistically, by interrupting the Applicant and changing the topic to pick up pieces of hearing-relevant information, sometimes as the Applicant was describing the violence.

In the following example the Applicant describes how the Respondent harassed her and her family by phoning constantly, trying to control her behaviour, coming to her home without warning, kicking the door, and "punching her parent's truck".

A: He constantly phones here. For – all the time, he's under – it's like in the middle of the night or early in the morning. And if we don't pick up the phone he comes here and constantly starts kicking the door. And if – I don't talk to him or anything, he ends up punching our truck.

C: When you say 'our' truck, is that you and your parents' truck?

A: My parents'.

C: When was the last time this happened?

C: Okay, can you give me specifics on what happened last night?

While it might have seemed efficient to change the topic to who owns the truck, and then the date of the last assault, the Court gives no indication that it understands the importance of the

events the Applicant describes. This breaks up the sequence of events, changes the interpersonal task, adds to the cognitive demands on the Applicant, and limits the scope to one event. Following is another example.

C: I want you to explain to the Court why you have come to the RCMP and have applied for an Emergency Protection Order.

A: [After a long description of violence, the Applicant concludes] . . . he just wanted to tell me that he was going to get rid of me and there'll be nothing left of me by the time he's done with me.

C: When did he say these things?

A: On Tuesday.

Omit one exchange

C: Okay, well let's back up a minute. Today is Friday. Now . . . you're saying that you're reacting to what he did on Tuesday.

A: Well, see . . . that happened on Tuesday. On Wednesday he came and broke into my house. . . . [Applicant goes on to describe more violence.]

The Court changes the topic from the Respondent's actions to the timing of those actions without a summary or shift marker (e.g., Okay, thank you. Can I just ask you when that happened?). Several problems develop as a result. First, the Applicant is not able to complete her description of the events, leaving the Court with incomplete information. Without this information, the Court accuses the Applicant of "**reacting**", a pejorative term in this context, too slowly to what is now in the eyes of the Court, a stale event. This creates an obvious problem for the Applicant, who must now work to provide the Court with the information it lacks. The Court repeats the charge that the Applicant reacted too slowly, two turns later: "**So, you've lived with him for 12 years. Why all of a sudden now – have you**

ever reported him before?" Faced with criticism from the Court, the Applicant must re-present the threats as real and fearsome. Finally, the Court omits the death threats from its summary – precisely the events that belay the assumption that the Applicant had reacted wrongly.

The net result is a hesitant decision by the Court, based on incomplete information. Moreover, in the conclusion, the Court admonishes the Applicant to act more promptly in future. The Applicant then tries to explain why she acted how and when she did. A casual reviewer might conclude that this example evinces an anti-victim bias. While we cannot rule this out, we suggest the problem is conceptual and methodological; conceptual, in that the Court may well subscribe to the stereotypical view that victims are passive and so must be exhorted to take action; methodological, in that the Court effectively suppressed exactly the information it needed by changing the topic, without explaining or showing understanding. Without the key information, the Court made an unwarranted assumption that it apparently felt compelled to defend.

In the initial stage of the EPO hearing, the Court is primarily concerned with setting the stage for the hearing. The transcript below begins prior to the Applicant and her Designated Representative being affirmed. Here the Court raises the very important issue of current levels of safety and gets an answer that clearly needs follow-up:

C: Okay. And where is Mr. XXX now?

A: I believe he's at XXX.

C: Okay, so he has the children with him?

A: Yes.

C: Okay. Are the children safe?

A: [inaudible] I was told from the RCMP that they are, but I'm not sure.

C: Okay. [pause] Alright, now…now, Ms X I'm going to ask—there's a representative of the Alison McAteer House, a Miss XXX, and I'm going to ask if you consent to her being your Designated Representative.

The Applicant indicates that she fears for the safety of her children. Before changing the topic, the Court should show the Applicant that it understands and takes seriously this critical information. The generic listener response "**Okay**" is not adequate in this case because it does not convey enough understanding. The Applicant's fear is left virtually unacknowledged as the Court initiates a major topic change. The procedural problem here is that the Applicant will probably worry about the safety of her children and focus less on giving a complete description to the Court. The interpersonal problem is that the Applicant could perceive the Court as uninterested in the safety of her children.

One page later in the transcript, the Court re-introduces the topic of the children's safety. This shows that the Court heard and understood the importance of the whereabouts of the children and the Applicant's concern. Note, however, that the Court first asks a quite narrow and closed question (i.e., calling for a "yes" or "no" reply).

C: Okay. And the RCMP said that the children were safe, but you are not sure yourself as to whether they're safe. Now, has Mr. XXX ever threatened the children?

A: He threatens them every time he comes home at night.

C: Ever [sic] time he comes home at night. And is he physically abusive to the children?

A: He hits them on the head every now and then, but he throws their toys around to scare them.

C: Okay. Now, is Social Services aware of this? I mean, have you ever reported this to Social Services?

The Applicant does not answer "yes" or "no", but takes the opportunity in this and the next response to provide more than the asked for information ("**every time he comes home at night**" and "**but he throws their toys around to scare them**"). It seems that the Applicant is aware that she must find a way to convey the frequency and extent of the violence and abuse against the children and yet do so in a vague and summary fashion, in light of the Court's previous disinterest.

The Court then initiates another topic change, missing an opportunity to develop a clear and complete description of violence by the Respondent against the Applicant's children. Instead, the Applicant's actions become the topic. The question, "**I mean, have you ever reported this to Social Services?**", can be taken to imply that the Applicant should have reported the abuse and violence to Social Services and would be blameworthy if she did not. The change in topic from the Respondent's violent actions to the Applicant's actions suggests to the Applicant that her credibility and care for her children are at issue.

Not surprisingly, the Applicant responds to these indirect allegations by not exactly remembering her actions.

A: Yes I have.

C: Okay, and when was the last time you reported this to Social Services?

A: [inaudible] I think it was last month [pause]

C: You don't remember, okay. Okay. [pause] Have you ever applied for an EPO that wasn't granted?

A: No

C: Okay. And there's just the one?

This allows the Applicant to avoid the negative consequences that might ensue if she said, "No", she had not "**ever**" notified Social Services. The Court could of course construe this response as vague and misleading when, arguably, it reveals the Applicant's attempt to avoid negative judgment and, she might then anticipate, a negative decision.

USING ACCURATE LANGAUGE

Four Operations of Language

As already stated, an essential starting point for intervention in cases of violence is a clear and coherent description of the offender's violent actions and the victim's responses to those violent actions, in context. To achieve this indispensable first step, the Court must use language that accurately captures the nature of the actions in question and is proportionate to the severity of those actions. This is more difficult that it may at first appear. In legal and other settings, language is often used in a manner that (a) conceals violence, (b) obscures offender responsibility, (c) conceals victim responses and resistance, and (d) blames and pathologizes victims. We refer to these as the four operations of language.

In practice, the four operations combine to create inaccurate, sometimes highly distorted, descriptions. For example, terms that portray the offender as out of control (e.g., due to anger or alcohol use) obscure offender responsibility by portraying the violence as non-deliberate. These terms also conceal the violence by diverting attention from violent or controlling acts that occur when the offender is sober or not angry, conceal victim resistance by narrowing the focus to only those violent acts that may be too dangerous to resist openly, and blame and pathologize victims by then raising questions about why they "put up with it" or "let it happen" or "choose abusive men". Below, we show the four operations of language at work in the EPO transcripts. We illustrate the use of referents, minimizing terms, mutualising terms, and abstractions and mental inferences.

Next, we illustrate how to avoid these problems and obtain clear and complete descriptions. In short, the Court must deliberately use language that (a) reveals violence, by focusing on actions in specific settings rather than abstract terms, and using language that conveys the unilateral nature of violence, (b) clarifies offender responsibility, by avoiding language that portrays offenders as out-of-control and by highlighting the deliberate nature of violent acts, including efforts to suppress victim resistance, (c) elucidates and honours victim responses and resistance by enquiring about victims' responses to specific acts of violence and oppression, and (d) contests the blaming and pathologizing of victims by obtaining descriptions that put victims' responses in context. We show how the Court develops clear and complete descriptions in several instances.

Referents

The establishing of a joint referent - what an action or a series actions is going to be called - is a natural and important part of any conversation. We never repeat all of the information that we hear as even simple conversations would become unmanageably long. Instead, we develop summary terms or referents. In doing so, we represent the characteristics of actions and the actors or recipients of those actions. Therefore, the selection of a referent is not a simple or neutral action. Through the selection of a referent, the Court can convey whether it understands what has been stated, whether it believes of disbelieves the Applicant, and whether it assigns blame or responsibility. The Court can also select a referent that re-interprets what the Applicant said.

Unfortunately, most of the quick one-word referents we use to refer to violence are inaccurate and tend to distort or even destroy evidence. Most are mutualizing, that is, they portray unilateral violent acts, for which one person is responsible, as mutual acts for which two people share responsibility. (We discuss the distinction between unilateral and mutual actions below.) Some legal terms are appropriate and accurate referents for violence, the word “assault”, for example. The word “offense” is reasonably good but does not suggest violence when used by itself. The rarely used word “violation” encompasses a broad range of physical and psychological violence. However, physical descriptions such as “the Respondent grabbed and strangled the Applicant” are often best.

In most cases, a single word will not convey all of the Respondent’s violent actions. For instance, let us say that the Respondent grabbed the Applicant by the shoulder as she

tried to leave the house, threatened to kill her, shoved her away from the door, and tried to punch her. The word "assault", which would accurately categorize the Respondent's actions in a general sense, would still specifically omit the threat, the attempt to punch, and possibly even the act of shoving her. (An example of the Court omitting the Respondent's pushing of an Applicant is presented below.) Therefore, it is better to use longer phrases that summarize the Respondent's actions rather than one or two word phrases that omit pertinent actions.

In the above example, the Court could summarize: "Okay, so he grabbed you, shoved you, tried to punch you, and threatened to kill you", and follow-up with a question about the circumstances at the time, such as "When he did all of these things, where were the children?". To obtain a description of the Applicant's resistance to the violence, the Court might ask, "Okay, so when he grabbed you, how did you respond. You know, what did you do?". (We discuss the importance of elucidating victim resistance below.) Using longer referents also conveys to the Applicant that she has been understood and that the Court is considering all or most of her evidence as relevant in the EPO hearing.

The selection of a referent is ideally collaborative. In the example below, the Court and the Applicant essentially negotiate the term that will be used. The Applicant just described how the Respondent keeps her under surveillance, how she does not go out alone, and keeps her windows covered. The Court responds:

C: Monitoring your life, so he was checking up on you.

A: Yes. Stalking me.

C: Checking up.

A: It was more like stalking.

C: Yeah, stalking.

A full page later, when referring to these actions, the Court continues to use the established referent:

C: Okay. Stalking, coming over, banging on the walls. . . .

In this way - using an agreed upon referent that was introduced by the Applicant - the Court convincingly demonstrates that it is interested in and paying careful attention to the experience of the Applicant. This establishes the best interpersonal conditions for the Court to obtain a clear and complete description.

One of the most common referents used by the Court in the EPO hearings was the word "incident". For example, in the first shift into the description phase of the interview, the Court often asks "What is the incident that's bringing you here today?", or the like. While this term seems neutral, it is in fact problematic and works against the Court's efforts to develop a clear and coherent description. The Court wants a description of all the relevant violence and threats. However, the term "incident" is singular: It embeds the idea that the Applicant should talk about a single incident or event. Yet, rarely, if at all, do Applicants seek an EPO after the first and single "incident". Rather, the transcripts reveal typically a series of violent and intimidating actions by the Respondent, which increasingly jeopardize the Applicant or her children's safety.

By directing the Applicant to describe a single "incident", the Court makes the Applicant pick one problematic act by the Respondent as the one to be talked about. In this way, the Court subtly excludes the whole series of actions surrounding the "incident". The risk is that the Court will give the impression that it is not interested in the larger fact pattern,

fail to obtain the information needed to evaluate the significance of the current "incident", and minimize the violence as a result. The following is an excerpt in which the Applicant reported a series of violent acts and threats.

C: Okay, and the incident with which you have a concern, has it been reported to the RCMP?

A: Yes.

C: And is Mr. [Smith] known to the RCMP?

A: Yes, he has been known to them since 2002.

In the first question the Court narrows the range of the Applicant's concern to one time or action, "**the incident**", that could have been reported to the RCMP. The Applicant responds in the last line by telling the Court that there is a long-standing record of violence, dating at least to 2002. The Court effectively puts the Applicant in the position of having to press this information forward when an opening occurs. Although the question asked by the Court required only a "yes" or "no" answer, the Applicant seized the opportunity to present the larger history, beyond the "incident".

In the next example, the Applicant has already testified that the Respondent threatened and assaulted her children everyday. Nevertheless, in two questions to the Applicant, the Court presupposes that the EPO application is based on a single action by saying "**the incident**" and "**it**" which are both singular referents:

C: Alright. Now, okay, so . . . the incident that we are dealing with now, the RCMP, of course, from what you said, they know about it?

A: Yes.

C: Okay. Just give me a second here. [pause] I'm typing this down [… closes the Court and then resumes later]. Alright, now … Mrs. [X] … alright, so, the RCMP are aware of the situation at this time and now … alright, so, what is it that made you apply for an Emergency Protection Order at this time? Okay, now, what . . . let me just clarify something for you. As I said earlier, in order for an Emergency Protection Order to be granted, there has to have been family violence and there has to be an emergency. Okay?

A: Yes.

C: So, I want you to tell the Court why you believe an Emergency Protection Order is necessary. Okay? So, you just go ahead and tell the Court why.

A: [inaudible]. Well, there was an incident that happened tonight. The reason why I'm here.

C: Mm-mhmm.

A: He threatened to hit me . Like, he came after me, but I ran out the door before he could touch me. And before I came here to the Shelter. He was throwing all the furniture out of my house with my kids in the house while they were sleeping. And I ran away. I ran up the hill from my house and jumped in a cab and came to the Shelter. But that's not the only incident. Every other day that he comes home, he threatens me. He tells me the only way I can leave him is in a box. Or he'll tell me "Til death do us part." He'll tell me that he'll burn the house down if I leave. I've been to the Shelter with my kids before. He's also threatened to come to the Shelter and burn it down if I'm here. A few times, about two months ago, he beat me up in front of my kids.

C: Okay. [pause] Okay, so, the incident tonight, the Respondent … okay, he threatened to hit you. But you escaped.

A: Yes.

By using the terms "**incident**" and "**it**", the Court constrains the Applicant to talk about one instance of violence. The Applicant must accept or reject this constraint without directly challenging the Court. Here, the Applicant picks up the Court's terminology, uses the term "**incident",** and at first limits her scope to the violence that occurred that night (**"there was an incident that happened tonight"**). But the Applicant needs to describe the Respondent's violent actions across instances and across time, to relate his present actions to his past actions, for the Court to fully understand her responses and the present need for an EPO.

To do this, the Applicant must step out of the constraints imposed by the Court. She initiates this with the shift marker, "**But**", to signal the concealed challenge that comes next, "**that's not the only incident**". She then goes on to provide a brief description of some of the Respondent's threats against her, the children, and the women's shelter. She finishes with telling the Court that the Respondent **"beat [her] up in front of [her] kids"**. That the Respondent beat the Applicant up in front of their children is evidence of violence against the Applicant and abuse against the children: It is fundamentally abusive for one parent to force children to watch and listen as they violate the other parent. The terror induced by this kind of violence can hardly be overstated.

From the body of evidence provided about the Respondent's actions, the Court selects the least severe, **"he threatened to hit you"**, to follow-up. This minimizes the violence and conveys one or more interlinked messages to the Applicant; that the Court does not wish to understand the whole pattern of violence, does not wish to understand the Applicant's level

of fear and other responses, or does not wish to hear further evidence against the Respondent. Of course, it may be that the Court already feels satisfied there is enough evidence to grant an EPO, and so feels no need to enquire further: If so, the Court should explain to avoid misunderstanding.

As this example shows, the term “incident” results in a loss of information. It is an agentless term – an earthquake is also an incident – and does not convey who did what, or even that one person acted against another. Instead, both parties are rendered equal participants in an “incident”. In this way, the term mutualizes the Respondent’s violent actions and shifts responsibility to the Applicant. At the beginning of a hearing the Court does not have enough information to use long descriptive phrases as referents, instead of “incident”. Nevertheless, in questions to the Applicant, it is possible to use less restrictive terms such as, “Can you tell me what occurred today?”, or better yet, “Can you tell me why you are afraid for your safety?”

Mutualizing

Violence is unilateral in that it involves actions by one person against the will and well-being of another. There are of course cases where more than one person is violent against one or more other people. However, sexualized assault or rape, and so-called domestic or intimate partner or family violence typically involves unilateral actions by one person against the other. The terms we use to describe those actions should naturally convey their unilateral nature.

However, our own and others' research shows that unilateral acts of violence are often described as mutual or joint acts. Intimate partner violence is called a fight or conflict or domestic dispute or abusive relationship. All of these terms redefine the unilateral act of violence as a mutual act. Rape or sexualized assault, which involves forced oral or anal or vaginal penetration, is often called intercourse or sex. Unwanted oral contact is called a kiss. Forced grabbing of body parts is called fondling. Genocide by Europeans against Indigenous peoples in Canada is called a "historical relationship problem".

Mutualizing terms conceal the unilateral nature of the violence and sole responsibility of the offender and portray the victim as a co-agent or participant. Sex or intercourse is a mutual and consensual action: To refer to rape as sex, therefore, is to suggest that the victim consented. Similarly, an argument or fight is a mutual, if unpleasant, action: To refer to an attack by the Respondent against the Applicant as a fight is to portray the Applicant as a participant or co-agent of the attack, and therefore as partly responsible. Our research shows that mutualizing terms conceal violent acts, blame victims, conceal victim resistance, and obscure offender responsibility. Naturally, the Court works to use terms that accurately

portray the unilateral nature of violent acts: To do otherwise is to foster distorted descriptions that harm the Applicant and benefit the Respondent.

In the following excerpt, the Applicant describes being sexually assaulted by the Respondent. The Court defines the assault as sexual and, therefore, as mutual.

C: During the time that you've known him and been in this relationship with him, has he always been aggressive towards you like this?

A: Yes. And sexual abuse.

C: Okay. When did you two start going out?

A: June XXX

C: Okay. And – and right from the start he's been aggressive and sexually abusive?

A: No. He was okay until August [date].

C: What happened then?

A: We started to kiss, then I wasn't -- I didn't want to. Then he didn't listen, then (inaudible).

C: Okay. Was that reported to police?

A: No.

C: No. Now, was that –that was the—was that then the first time that you two had – had relations? Had sex?

A: Yeah.

C: Yeah.

A: That was the first time I've ever had sex.

C: Okay. Okay. And he forced himself on you at that time.

A: Yeah.

C: Yeah. What about—

A: Between seven to eight in the morning.

C: Okay

A: Three times in a row.

C: That same morning?

A: Yeah. In like fifteen to twenty minutes. Three times in a row..

C: Okay. Your relationship after that, what was it like? How – how did he treat you after that first time?

A: After that it was kind of awkward, and quiet. And then some time in Septem. . . . He went and fooled around with these two other girls and then I broke up with him. And then all of a sudden he told me that he didn't sleep, eat, or anything, didn't leave his bedroom for like a couple of weeks. But then I went and talked to him. We started gong back out, and then some time in November he kind of like broke me too much, and I came to his house and felt like I was suffocating.

C: I'm sorry, in November he – he what?

A: He like started getting too attached. I felt like I was suffocating. And then I'd be mad, so I started cutting my wrist. And then I had to go to the hospital for that.

C: Okay. How long were you in the hospital for?

A: Maybe two weeks.

The Court recasts the unilateral sexual assault (i.e., rape) as sex "**you two had relations. . . . had sex**". The first phrase, "**you two**", already defines the actions as mutual.

Interestingly, the Court uses the unusual euphemism for sex, "r**elations**", which connotes a mutual or relational activity. The word "**sex**" completes the mutualizing construction. The Applicant had described a rape but follows the Court's description and also mutualizes the violence with, "**the first time I've ever had sex**". Here we begin to see the tragic consequences of failing to distinguish between unilateral violence and mutual sex: Like the Applicant here, many victims are raped long before they have sex and struggle with the fact that the rape, which does not feel to them like a mutual and sexual act, is defined in broader society, and by experts in criminal justice and human services, as sex. The vast disparity between the nature of the violence and the meaning it is later given is a source of confusion and suffering for many victims.

The Applicant continued to have some kind of relationship with the Respondent after the series of rapes, due in part it seems to concern for his well-being. The Applicant's internal and external responses to the Respondent make sense –that is, seem proportionate to, and logical in, the situation– only if the series of rapes is defined as such, not as sex. The Applicant was "**awkward and quiet**", "**broke up with**", felt like she was "**suffocating**", and "**cut [her] wrist**" to the point of needing medical attention. These responses are forms of resistance to the rapes and the Respondent's subsequent manipulations, but could be interpreted as signs of pathology or confusion in the victim if the series of rapes was in any way obscured.

Later in the same case the Applicant describes her resistance to the Respondent's subsequent actions:

C: And how did he respond when you broke up with him in January?

A: He started crying.

C: But he still kept on trying to talk to you and stuff?

A: Yes. But, it just made me mad that he started crying.

C: I'm sorry?

A: I said it just made me mad that he started crying.

C: Okay. Why?

A: Because I don't like it when boys cry, because I mean—

C: Okay. Okay, so now about how often, after the two of you broke up, how often did – did he continue trying to talk to you and stuff?

The Applicant could seem harsh here, as though she was using a male stereotype (that men should not cry) against the Applicant. After all, what would be wrong with the Respondent crying? The Court could have given the Applicant more room to state why she objected to the Respondent crying. In all likelihood, the Applicant would then have articulated the rationale behind her resistance. She would emerge then, not as an insensitive person who blamed men for crying, but as a strong person who refused to be manipulated by the offender. As well, the strategic nature of the Respondent's actions – turning himself into the victim to be helped, coercing the victim into managing his emotions instead of finding relief for herself – would become more transparent.

In another case, the Applicant used clear unilateral and violent language to describe how the Respondent verbally abused her, threw her against the wall, threw her to the floor, and smashed her head into the floor repeatedly.

A: And he threw me onto the floor and started punching my head into the floor three times, to the point where there was blood all over the place. And then after

> **that, my friend said, "The cops are coming. You'd better get out of here", you know. Or "Stop it." And he just took off.**

The Court mutualizes the acts of violence by the Respondent:

> **C: Okay. So there was an incident of violence between you two years ago. Any other instances of that nature?**

After defining the violence as mutual ("**an incident of violence between you two**"), which shifts blame to the Applicant, the Court asks the Applicant if there were any other such "**instances**" - for which she would be seen as partly to blame. Sagely, the Applicant responds by minimizing the severity of that violence:

> **A: Not of that nature, just slapping, hits to the head, like, you know, just …verbal abuse.**

The Applicant functionally reduces her perceived responsibility by decreasing the degree of violence, at the same time presenting a clear physical description of actions by Respondent. Then, below, the Applicant describes interactions between she and the Respondent in a way that re-asserts the unilateral and violent nature of the Respondent's actions.

> **A: Just last Tuesday, when I was in bed, I was trying to get him to stop drinking and I was telling him, "Get to bed. Get to bed," you know. Finally at 6, I was just really angry because, you know, he had to take care of (daughter) and I just wanted someone to help me take care of [her] because she's been sick since Saturday and she's, you know, she really needs both parents. But he was drinking all night long and he just got frustrated and I just, like, you know, he slapped—you know, he kind of decked me on the side of the head, while [daughter] was in front of me breastfeeding. And he told—I told him, I was like, "You'd better stop it. Otherwise, I will call the RCMP and have you arrested and you can lose you job." And he's like, you know, "It would be worth it because I would", you know, "deck your mouth. I would . . ." He told me, "You have ugly teeth and it would**

be worth smashing your mouth in!" And then, he took off to the room. He took off and, like, you know, went "Get out of here!"

C: Okay.

Again, in this example, the Applicant was forced to respond carefully, if insistently, when the Court recast the violence as mutual.

When the Applicant uses a mutualizing term, the Court can seek clarification. In this next example, the Applicant uses a mutualizing term, "**argues**", which obscures who did what. In keeping with this method of obscuring agency, she does not make it clear that the Respondent was yelling at her, not just randomly screaming. The Court then seeks clarification, which immediately results in a description of verbal abuse and physical violence.

A: We've been drinking since yesterday. We shared a 18-pack and one thing led to another. We argued and we've been fighting ever since.

B: Okay, so, so . . .you started arguing yesterday?

A: Yeah, yesterday about midnight and the middle of the night, my kids are sleeping, he's screaming and slamming doors, playing loud music and …he…

C: Screaming at you?

A: Yeah, he was screaming at me and telling me that I'm useless and that he didn't want to be with my anymore. That I'm a dog and he doesn't want anything to do with me.

C: And the children were sleeping at the time?

A: Yes, they were, and I was … I went to bed, must have been … I don't know what time-two o'clock. And he came upstairs, freaking out. He punched me in the leg. He'll punch me but …he punched my butt and he's telling me to get out.

> **Get our kids up and get out. The middle of the night. Which I refused to do and then I went to lay down with my kids, but he still kept on screaming, looking at this dirty books and saying that he doesn't' need me any more. And that he hates my guts. And then it just went quiet. It must have been four o'clock in the morning, I finally got some sleep. And then we woke up. And he's like, "Get the fuck out of bed, you funken bitch." Putting me down.**

Then the Court mutualizes the violence with the phrase "**the history of violence between you**". The Applicant responds, as in the first instance, by omitting all the physical violence and threats. She also refers to the violence in mutualizing terms, "**argue**" and "**fight**".

When the Court asks a question that positions the Respondent as the agent, the Applicant tends to follow suit and provide details of physical violence.

> **C: Can you tell me about the history of violence between you and Mr. XX.**
>
> **A: Well, we argue, we fight, a lot, on[sic] the past and he's been charged for . . . what do you call it? Abuse.**
>
> **C: He's been charged?**
>
> **A: yeah.**
>
> **C: Okay. Now, when he was charged for abusing you? Do you remember?**
>
> **A: Ninety . . . ten years ago. He slapped me while I was pregnant with our older son. And he was sent up here—we were previously living in XX at the time.**

Here, the Court initiates the change from a mutual to a unilateral description, with "**He's been charged**?" and then "**Now, when was he charged for abusing you?**". The Applicant picks up the unilateral description with "**He slapped me** . . . '.

A few lines later, the Court asks another mutualizing question:

C: Have there been other incidents of violence between you and him?

A: Not that's been reported.

C: None that have been reported, but can you tell me about some of the violence?

A: It's just the same. All we do is argue, verbally abuse each other. And the only people that are getting hurt are our children. And I'm tired of it. I don't want that kind of environment for my children, so . . . so, I came to the Alison McAteer House. I've been trying to get rid of him on my own for quite some time now, and I've not been successful. And my kids are tired of it and they don't need it, so I need help.

The Applicant responds to the mutualizing phrase from the Court, "**incidents of violence between you and him**", by further mutualizing the violence, "**All we do is argue, verbally abuse each other**", and limiting the information she gives. She first tells the Court that no other acts of violence have been reported. Then, when the Court shows interest in "**other incidents**" and continues to define the violence as mutual, "**between you and him**", the Applicant down-plays and mutualizes the violence herself with, "**All we do is argue, verbally abuse each other**". Notably, having downplayed the violence, the Applicant then downplays the harm she has suffered, "**the only people that are getting hurt are our children**". This is an understandable statement by a parent, but one that conceals the harm she too has suffered.

In another case, the Applicant quickly contests the manner in which the Court mutualizes the violence by providing clear, unilateral descriptions.

A: Well, he said he was going to beat me up with a bat, but he didn't say anything about [inaudible].

C: Okay. Have you ever had any severe physical injuries that caused you to go for medical help, during any of your altercations?

A: I don't think so, not that I can remember. Other than when, you know, I got thrown, or like slapped and hit when I was pregnant. My Mom was in Yellowknife. That's where I went after that happened?

C: Mmm-hmm

The Applicant reports a threat that the Court ignores, "**he said he was going to beat me up"**. The Court then asks a mutualizing question, with the phrase, "**any of your altercations**". The Applicant then describes more violence by the Respondent, using a passive and agentless grammatical structure, "**I got thrown, or like slapped**", that nevertheless acknowledges that she is the victim, not a co-agent in the violence.

Applicant Resistance to Violence

Victims invariably resist violence as it occurs, immediately after, and even long after. In cases of protracted violence, victims often resist pre-emptively, before an attack. Resistance is sometimes overt, consisting of persistent verbal and physical struggle. These are the most widely recognized forms of resistance in criminal justice and mental health settings. More often, however, open resistance is too dangerous and will result only in more violence as the offender tries to overcome that resistance. Consequently, victims are forced to use a combination of tactics, some overt or nearly overt, others completely disguised and indirect. In some cases, the only possibility for the realization of resistance is in the privacy of the mind.

Perhaps the most convincing evidence for the ubiquity of victims' resistance are offenders' strategic efforts to suppress that resistance. Indeed, virtually all forms of violence consist in part of strategies used specifically to suppress the victims' resistance. In cases of wife-assault, for example, the offender typically takes steps to isolate the victim, limit her access to vehicles and money, issues threats if she should leave or expose the violence, and engages in surveillance and interrogation, to ensure she cannot escape or find decisive support. Only if the Court recognizes the Applicant's resistance as such will it also recognize the strategies used by the Respondent to suppress that resistance. The nature of these strategies evinces the full extent and deliberate nature of the violence and provides key indicators of the level of danger posed by the Respondent.

Although victims invariably resist, seldom is this overtly recognized. Indeed, much professional and criminal justice work is predicated on the false assumption that the victim is passive and fails to resist due to personal deficits such as a lack of awareness, poor self-esteem, lack of personal boundaries, and so on. Treatment literature for victims and offenders, public policy, mental health diagnostic systems, psychological tests, risk assessment devices, and a variety of other materials fail to take into account the reality of victims' ongoing resistance and, as important, offenders' strategic efforts to suppress that resistance. In the EPO hearing, the Court is in a unique position to identify resistance and suppression of resistance as a means of developing the most detailed and accurate description possible.

We saw numerous examples of Applicant resistance in the transcripts, but the Court did not acknowledge this resistance as such. This leaves intact the prevailing stereotypes of women as passive victims who choose and fail to leave abusive men and are therefore largely to blame. Indeed, in some cases the Court blamed the Applicant for failing to act as the Court deemed appropriate, to report the violence for example, even though the Applicant described some forms of resistance in the hearing. Apparently the Court did not recognize that, in many cases, and in remote communities especially, the Respondent will only become more violent if the Applicant calls the authorities, and will not respect imposed no-contact or other conditions.

In the following excerpt the Applicant had described how the Respondent assaulted her. During the assault, the Respondent bit the Applicant on the chin. Toward the end of the hearing the Court asks if the Applicant needs medical attention.

C: Now, did you require medical attention for the injury

A: No, I didn't.

C: …you had to your face. No?

A: No.

C: Do you think you will?

A: No, I don't think so.

C: Okay.

A: It's just a little bruised. He didn't break my skin.

C: He didn't draw blood.

A: I got him away with my palms.

C: Okay, there's no other injuries when he was throwing things at you?

Without information about the Applicant's physical resistance, it seems like the Respondent's violent attack was not severe, as though he held back and was not seriously intending to hurt her. Indeed, the Court adopts this position when it said "He didn't draw blood" versus something like "the injury he caused isn't bleeding?". The Applicant responded to this wrongful inference by describing her physical resistance, "I got him away with my palms". Therefore it is clear that we cannot assume that the Respondent lacked serious intent; the Applicant was able to minimize the injuries through her own resistance. In this way, we have a much better understanding of the magnitude and severity of the bite against the Applicant by the Respondent.

Grammatical Constructions that Conceal Agency/Responsibility:

Speakers use a wide variety of grammatical constructions when describing events. Following are some examples, describing a simple assault.

Bob hit Sue. This is an active sentence. Bob is the subject, hit is the verb, Sue is the object. We know who did what to whom.

Sue was hit by Bob. This is a passive sentence. Though Sue is still the object of the verb, she is now placed in the focal position of the sentences, as if she were the subject. Research shows that with this grammatical structure, readers/listeners are more likely to focus on Sue than on Bob. That is, Sue, not Bob, becomes the focus of interest: Particularly when the object is female and the subject male, people tend to focus on what Sue did to warrant Bob hitting her.

Sue was hit. This is a passive and agentless sentence. Note that the offender is not named. Sue is the focus, the object of the verb, but the identity of the offender is concealed.

There was an assault. This is an existential structure in that the verb, hit, is replaced by a noun, assault. We are not told who did what or to whom.

Sue and Bob had a fight. This is a mutualising and existential construction. Sue and Bob are co-agents and therefore equally responsible.

They had a fight. This is a mutualising, existential, and agentless construction.

Note the increasing loss and distortion of information with each example down the page. Research shows that judges and other professionals use passive, agentless and mutualising constructions widely in cases of violence. The most descriptive and informative constructions are active sentences with accurate verbs: We then learn who did what to whom.

The following example shows how different grammatical structures combine to obscure the events in question. The Applicant uses a phrase that conceals the Respondent's agency ("**And I hit that thing, then I fell down**") and a mutualizing phrase that subtly shifts responsibility from the Respondent to the Applicant. The Applicant states:

C: Okay. Can you tell me what happened?

A: I wasn't paying attention to what he was saying, 'cause I was kind of thinking of something else.

C: Okay.

A: And he got mad because he was calling my name so much, and he like grabbed my throat and squeezed it, and then he pushed me against a little baby's walker.

C: Okay.

A: *And then I hit that thing, then I fell down.* Then he like walked to the door and slammed it. Then he kicked it, and *then that door swung open and that little piece to hold it there closed broke off.*

C: Okay. This was at your house?

A: Yes.

C: Okay.

A: *And our daughter was sitting there watching us*.

C: Did he leave any physical marks, any bruises or anything, when he – when he was choking you?

A: No, but there was one time when he left a bruise on me. It was on my wrist because he squeezed my wrist too hard.

C: Okay. When was that?

The phrase, "**he like grabbed my throat and squeezed it, and then he pushed me**" is an active construction that conveys a great deal of information. However, "**and then I hit that thing, and then I fell down**" omits mention of the Respondent and positions the Applicant as the agent of the actions, the hit and the fall. In fact, the Applicant is describing what happened when the Respondent pushed her. A more accurate phrasing would be, "and then he pushed me against that thing, and then he pushed me down". The nearly adjacent phrase, "**then that door swung open and that little piece . . . broke off**", conceals the fact that the Respondent swung the door open and knocked the "**piece**" off.

The Applicant then uses a mutualizing phrase, "**our daughter was sitting there watching us**", which suggests that the Applicant was equally as responsible as the Respondent for engaging in and stopping the violence. In actuality, the daughter was watching the Applicant resist while being attacked by the Respondent.

When agency is concealed, who is responsible for what becomes unclear. Mutualizing terms fill the descriptive void and attribute responsibility to the Applicant and Respondent, rather than to the Respondent alone.

Abstract and Misleading Descriptions

Often, the Applicant or the Court introduced misleading or incomplete descriptions of the violence. For example:

C: Well, when – when was Social Services involved, and – and why?

A: They got involved because [the Respondent] was out of hand.

C: He was out of hand?

A: Just getting out of control.

C: Okay, when did this happen? Like – when was he out of control?

Here, the Applicant introduces the vague term "**out of hand**" which tells the Court very little about the Respondent's actions. The Court repeats the Applicant's words, "**He was out of hand?**" This is an appropriate strategy as it indicates tracking and understanding and asks the speaker to supply more detail. In this case, though, the Applicant supplies another cliché, "**Just getting out of control**". The Court tacitly accepts this cliché as adequate, abandons the search for clarification, and shifts the topic to when the respondent was "**out of control**".

While it is important to establish a time frame, it is arguably more important initially to establish who did what. Past actions can then be linked to the present. Later, the Applicant states that this "**out of control**" behavior occurred "**a couple of times now**" and that it was "**getting too serious**". The Court misses an opportunity to encourage the Applicant to provide a clear and coherent description of the violence she and her children had suffered. A simple two-part question, "What do you mean 'out of hand'? What did he do?"

would likely have yielded more detailed descriptions, and the Court could then establish the time frame.

In some cases the Court drew inferences about the cause of the Respondent's violent actions or the mental status of the Respondent. For example, in one case, the Respondent threw a hunting knife at the Applicant after ordering her out of her own house. Below, the Court asks the support person (a translator) for the Applicant to provide reasons for the Respondent's actions.

> **C: Okay, okay, was there, does she know if there was any reason why he told her to get out or did he just wake up that morning and tell her to get out?**
>
> **Support Person: Three of his friends came into the home and she believed they were drinking, so she asked them to leave.**
>
> **[Omitted several turns.]**
>
> **C: Okay, was the Respondent drinking as well, does she believe?**
>
> **SP: She believes that he was drinking but she's not sure how intoxicated he was.**
>
> **[Omitted several turns.]**
>
> **C: Does it make a difference whether he's drunk or not? Does his behaviour get any better when he's sober. . . . ?**
>
> **SP: She said, even though he's not drinking . . . he has an attitude toward her.**

The Court asks the Applicant to give a reason for the Respondent's actions. The intent here is probably to get information about the immediate context, but the question actually invites the Applicant to infer causes, which she cannot provide without a mind-reading device. The Applicant provides some information about the context, namely the men coming over to her house and drinking. The Court then rightly picks up the Applicant's

concern and goes on to ask two questions which presuppose that alcohol may be the root of the problem; that is, that alcohol robs the Respondent of self-control. Thus, the Respondent, could not anticipate and overwhelm the victim's resistance. This common view conceals deliberation (no intent is formed, alcohol is compelling) and obscures responsibility (alcohol is ultimately responsible) for violence. Notably, the Court enquires but does not push or openly state this common view. The Court might have asked the support person earlier, "Okay, why was she concerned about the men drinking in her house?", and would then have obtained the information. The Applicant, speaking through the support person, then discards the alcohol-as-cause theory.

The Court also abandons the alcohol-as-cause theory and asks a series of well-phrased questions to determine the larger pattern of violence and intimidation. Nevertheless, the Court again embeds a problematic and excusatory causal theory into its questions, this time that anger may be the cause of the violence. This commonly held view also conceals deliberation and obscures the Respondent's responsibility.

SP: He broke all the windows. Like, not . . . I'm not sure how many windows, but he did break some of her windows. That's the reason she went to ask for help.

C: Okay. So he forced his way in [to the home]. Has he caused damage to her property before when he's been angry?

[Omitted several turns.]

SP: Like, he likes to break stuff in the home. Like, he broke her lamp and . . . he likes to throw stuff around when he's angry.

C: Okay. How often would she say that he gets physically angry like that?

SP: He's always angry all the time.

The Court links the Respondent's destruction of property and intimidation of the Applicant to the state of being "**angry**". This is an unwarranted assumption: The Respondent could just as well be using intimidation coolly, with careful forethought, to achieve certain ends. The anger theory narrows the scope of the Court's enquiry; first, by highlighting only those occasions when the Respondent is thought to be angry and ignoring those when he is not, second, by shifting the focus from the Respondent's actions to his mind. A mental inference replaces a clear behavioural description. The Court refers to the Respondent as angry several more times.

Note that the question "**How often would you say that he gets physically angry like that?**", contains two problematic presuppositions: First, that physical aggression is always caused by anger, and second, that the Respondent is angry and aggressive only sporadically. The support person effectively contests both presuppositions with the brief but emphatic reply, "**He's always angry all the time**". The support person then mentions break-ins and violations of court orders committed by the Respondent when the Respondent could not be shown to have been angry. The Court then stops referring to the Respondent as angry. In this case, the Court was corrected by the Support person on the basis of information from the Applicant. Another Applicant, with a less active Support person, may not have persevered, and the Court would have been left to believe its theory was valid and its narrowed enquiry was adequate.

In both preceding examples, the Court asked the Applicant to speculate about causes of the Respondent's actions. This put the respective Applicants in an untenable position. Either they must propose a theory, such as anger or alcohol abuse, that would seem to be acceptable to the Court. Or they must provide a description of the circumstances. In some

cases, this left the Applicant describing her own actions as the cause of the Respondent's violent actions. The Applicant's resistance to the Respondent's violent actions is then recast as the cause of, or as a contributing factor to, the Respondents violent actions.

The Court often works effectively to elicit clear descriptions of actions in context, as in the following case:

A: Okay. And has there been any physical violence between that incident four or five years ago and what occurred on Saturday?

A: No.

C: He's never hit you or anything.

A: Mental abuse, verbal abuse, alcohol abuse.

C: Okay, and what you are calling verbal abuse, ma'am, is he threatening you, or--?

A: He's threatening that we're – the kids are—that no one's going to look after us, we're gong to be – like my [inaudible] –he's mentally abusing my –my family, 'cause they're –there's only one person that works out of the life. That's my brother, he's the only one that works full time.

C: Okay.

A: Okay.

A: He's saying that's all, we're a bunch of losers and whatnot.

C: Okay, and you've already related to me the sexual abuse that was attempted?

A: Pardon?

C: You've already related to me the sexual abuse that was attempted on Saturday?

A: Yes

At each point, the Court asks for specifics. The interrogative statement, "**He's never hit you or anything**", follows-up the previous question about "**physical violence**" and checks on the Applicant's understanding of the term. The Applicant reports other facts, "**Mental abuse, verbal abuse, alcohol abuse**", and the Court chooses to ask for specifics about one category, "**verbal abuse**". The Applicant responds with some details about the Respondent's actions and the social circumstances. Finally, the Court checks to see that the Applicant has provided all that she chooses to provide about "**the sexual abuse**".

In the following example, the Court asks two straight forward and timely clarification question, "**What do you mean by physical abuse? Can you please clarify?**", after the Applicant uses general terms to describe the Respondent's actions:

A: As in I've been monitored. I wasn't allowed to have friends over. Financially I was on a budget with everything. There was a lot of emotional abuse. Physical as well.

[Omitted several turns]

Shortly after, the Court re-introduces the topic of physical abuse, and directs the Applicant to provide more details.

C: Okay. What do you mean by physical abuse? Can you please clarify?

A: As in physically punching me, slapping me, slamming doors in my face. Basically throwing me down and slamming my head on the floor. Like that's, just non-stop punches. (inaudible) I was always protecting my face. That's the only thing. I would always guard my face because I didn't, because I have to work and I didn't want people to see me in that state.

As can be seen, asking for clarification worked to get the Applicant to provide clear details about the Respondent's violent actions against her.

Minimizing

The Court sometimes minimized the violence by the Respondent by using referents that downgrade the actions (See Referents) or, as in the following example, by failing to categorize violent actions as violent.

> **A: He pushed his way through the house. He pushed his way through me. I didn't want him to come in the house. I changed the locks and had my hands against the door. And he pushed right through me. And I'm a hundred and seven pounds.**
>
> **C: Okay, so . . . so, when he pushed you . . . okay, I mean he pushed the door open or whatever. . . .**
>
> **A: I was standing in the doorway and I didn't want him to come in.**
>
> **C: Alright, but he came in anyway.**
>
> **A: Yes, he pushed his way through me.**
>
> **C: Okay the two of you have been living in this house for 12 years?**
>
> **A: Yes.**
>
> **C: So, I guess you both have claims to the house. Okay, so he pushed you. He pushed you aside.**
>
> **[Omitted several turns.]**
>
> **C: Okay, okay, so a physical assault two years ago. Since then, its just, verbal assaults and threats and that sort of thing, is that right?**
>
> **[Omitted several turns.]**
>
> **A: Yeah, he pushed me out of the way there the other day. Be he didn't hurt me, but he still put his hands on me.**

Here the Applicant describes how, just days ago, the Respondent pushed her and came into the house, after she had changed the locks. The Court refuses to treat the push as an assault. After the Applicant states, "**Yes, he pushed his way through me**", the Court changes the topic to living arrangements and suggests that the Respondent has equal "**claims to the house**". This seems to justify the Respondent's actions: After all, he was just trying to enter his own house and the Applicant, then, was behaving inappropriately by trying to prevent him from doing so. The Court then downgrades the Respondent's actions with, "**Okay, so he pushed you. He pushed you aside**". The Applicant had stated, "**He pushed right through me**" and accentuated the power difference and risk to her self by commenting on her comparatively small size.

Shortly after, the Court gives a brief summary in which it states that there has been no physical assault in the past two years, "**just verbal assaults and threats and that sort of thing**". The word "**just**" minimizes the significance of verbal assaults and threats in a context of on-going physical violence. Moreover, the Court refuses to categorize the reported assault, "**he pushed right through me**", as an assault. The Applicant responds to this by re-stating her initial description, "**he pushed me out of the way**", and putting forth the argument that those actions constitute an assault, "**he still put his hands on me**". Notably, the Applicant prefaces this assertion with "**Yeah**", to indicate agreement with the Court before stating her disagreement. This is a sophisticated response and could indicate that the Applicant is aware of possible negative consequences of challenging the Court in the EPO hearing.

Applicants Restate to Give Complete Information

Applicants often worked to provide information that was not requested by the Court. There are likely two reasons for this. First, Applicants do not know exactly what information the Court wants and are motivated to provide any information that would predispose the Court to grant the EPO. Second, as discussed, the Court sometimes interrupts the Applicant and loses information and minimizes the violence. Applicants find or create openings to provide what they believe is important information. These instances are interesting because they reveal the Applicant's response to the Court and efforts to manage the conversation, procedurally and interpersonally.

We identified numerous instances in which the Applicant restates information. Several examples are presented in earlier sections of this report. In the following example, the Applicant introduced testimony that her children were being constantly assaulted by the Respondent. This was on-going and therefore would have occurred a short time before the EPO hearing. The Court did not incorporate this information when it asked for the Applicant to explain why an EPO was needed:

> **C: Alright now…Mrs X … alright, so, what is it that made you apply for an Emergency Protection Order at this time? Okay, now, what…let me just clarify something you said. As I said earlier, in order for an Emergency Protection Order to be granted, there has to have been family violence and there has to be an emergency. Okay?**
>
> **A: Yes**
>
> **C: So, I want you to tell the Court why you believe an Emergency Protection Order is necessary. Okay? So, you just go ahead and tell the Court why.**

The phrasing of this question defines the information already presented by the Applicant, about the Respondent's violence against her children, as irrelevant to the EPO hearing, outside of family violence, and not constituting and emergency. In short, the Court has effectively instructed the Applicant not to continue to talk about the violence by the Respondent against her children. The Applicant then shifts the focus and talks about the violence committed against herself.

A: [inaudible] Well, there was an incident that happened tonight. The reason why I'm here

C: Mhmmm.

A: He threatened to hit me. Like, he came after me, but I ran out the door before he could touch me. And before I came here to the Shelter, he was throwing all the furniture out of my house with my kids in the house, while they were sleeping And I ran away. I ran up the hill from my house and I jumped in a cab and came to the Shelter. But that's not the only incident. Every other day that he comes home, he threatens me. He tells me the only way I can leave him is in a box. Or he'll tell me, 'Til death do us part." He'll tell me that he'll burn the house down if I leave. And I've been to the Shelter before with my kids. He's also threatened to come to the Shelter and burn it down if I'm here. A few times, about two months ago, he beat me up in front of my kids. [inaudible]

C: Okay, let's – let's . . . let's just slow down a bit. Okay, so the incident tonight, the Respondent . . . okay, he threatened to hit you. But you escaped.

Not only does the Applicant shift to describing the violence committed against herself, as if complying with the direction of the Court, she does so by giving the Court a quick and comprehensive telling of violence and abuse perpetrated by the Respondent that very night. This fast rate of presentation can be understood as a response by the Applicant to

the implication that the information she presented earlier was irrelevant to the Court. That is, she moves quickly to try to secure the help she needs to keep herself and her children safe.

The fast rate of delivery and sheer amount of information is difficult for the Court to manage because it must understand and record the information given by the Applicant. Here the Court responds by saying "**Okay, let's – let's . . . let's just slow down a bit**." Here, the "**okay**" functions to let the Applicant know that the Court has tracked and understood the information on some level. The Court then instructs the Applicant to slow down. This presents the Applicant with the idea that she can both provide the wrong information and provide information in the wrong fashion. The Court softens its criticism of the Applicant by using the collective noun "**let's**", which suggests they both must slow down. Later in the judgment, the Court simply orders the Applicant to "**slow down**".

After this direction, the Court asks a series of question designed to get more details about certain aspects of the information the Applicant presented. She responds to these questions by giving very brief questions that lack rich detail. For example:

C: So, like verbal abuse?

A: Yeah. And actual, like, physically abusing me.

C: Okay and when's the last time he physically assaulted you?

A: Two months ago.

The Applicant noticed that the Court treated the first information she provided as irrelevant to the hearing and then worked to present as much detail as possible. Her description is unusually detailed in that it includes several examples of her own resistance. After the Court criticizes the Applicant, the Applicant provides only the bare minimum. This

is a change in tactics pursuant to the actions of the Court, though exactly what the Applicant intended cannot be ascertained from the data at our disposal.

Overt Victim Blaming

At times, the Court overtly blamed the victim for the violence that was perpetrated against her. For example, in one hearing, the Applicant presented evidence of repeated verbal abuse, intimidation and threats, physical assault, and economic abuse against her and her children by the Respondent. Embedded in the Applicant's testimony were descriptions of how she resisted the violence: She reported the violence, escaped the Respondent in the middle of an attack, and was currently in a hearing speaking against him. Despite evidence of violence and resistance, the Court turned its focus on the victim and criticized her for not resisting.

> **C: But why is it that you . . . I mean, you seem to put up with it. But what was it that made you say that it was enough and you called Alison McAteer House? What particular thing happened?**

By focusing on the Applicant and her imputed passivity, the Court places all the evidence of violence and abuse brought forth by the Applicant as not a problem unless the Applicant did not "put up with it". In this way, the Court introduces the idea that violence against family members is not deserving of protection and therefore perhaps not even against the law unless it has been actively and persistently resisted. Given that the Court stated "**but why is it that you . . . I mean, you seem to put up with it**", it is clear that the Applicant's imputed passivity is defined as the issue rather than the violence itself. In fact, the implication here is that the Court would not take steps to help the Applicant establish safety for herself or her children if she were passive or had "**put up with it**".

Notice too, that the Court directs the Applicant to then talk about a "particular thing" to give evidence to support an EPO order. This neatly renders all the information the

Applicant had previously given about long-term and on-going violence and abuse as irrelevant to an EPO order. Now, only the violence from which the Applicant escaped and fled to the transition house is deemed relevant to evaluating the EPO application. The Applicant is thereby limited to talking about the violence perpetrated against her that night and does not deviate from this directive until the Court asks question from outside of this timeline. In this way, the Court's inappropriate blaming of the victim interfered with its ability to obtain a coherent and accurate account of the violence perpetrated against the Applicant and her children.

The Court frequently asked some version of the question, "Why is the Applicant seeking protection now?" This focus was apparent in most hearings and even remained a focus after the Applicant had testified to the perpetrator having committed repeated acts of violence and abuse against the Applicant. The position the Court frequently took was that if the Respondent has been violent and abusive repeatedly, and the Applicant had not sought police or other assistance, and was still in contact with the Respondent, then the request for protection could not be explained on the basis of fear or actual violence. The underlying line of thought seemed to be, "If the violence was as bad as you now say, you would have done something sooner". For example:

> **C: So, if you've lived with [this] for twelve years, why all of a sudden now—have you ever reported him before?**

These questions to the Applicant did not seem to be about assessing the immediate danger to the Applicant but were instead about seeking an ulterior motivation for applying for an EPO. In doing so, the Courts were denying the relevancy of suffering violence and abuse to the granting of an EPO hearing. Such a position is antithetical to the EPO legislation.

Social Responses in Specific Cases

We mentioned earlier that social responses to victims of violence have lasting implications for victims' well-being in the short and long term, and level of cooperation with authorities. More than this, however, and more germane to the immediate goals of the EPO hearing, the quality of social responses received by EPO Applicants is immediately relevant to the level of danger present in specific cases. The Applicant is more likely to work with authorities and to escape the violence if she has received respectful and effective social responses rather than, for example, blame for being with an abusive partner. The social responses to the offender are equally important. If police and child protection respond swiftly and decisively to the offender, he is more likely to take advantage of programs and other support systems. Arguably, then, the quality and outcome of social responses is relevant to the EPO hearing.

The Court enquired about social responses in a quite restricted manner, asking Applicants if they had contacted police or child protection in the present case, or previously. Rarely did the Court enquire further, about the quality and outcome of the social responses by police and child protection, or relate the social response to the Applicant's responses – her sense of fear, for example – or the level of present danger. The Court seemed to assume that a report by the Applicant would trigger an appropriate social response. Unfortunately, grounded practice and research suggest that is not reliably the case.

In the following example, the Court asks directly about the quality of a specific social response to the Applicant.

C: Okay. Has Social Services been involved at all with the child or with you and Mr. XX.

A: Just once when [Respondent] took him to Yellowknife without me knowing.

C: Okay.

A: And I just went to them to try to get help to try and get him back to [home].

C: Okay. Did that work?

A: No.

C: Okay. And so, when Mr. XX came back to [town] you got the child back?

A: Yeah.

C: Okay. How long was he gone?

A: How long was he gone?

C: Yeah, during that, when he took your child there.

A: He was gone about three days.

C: Okay. Okay. Okay, so . . . but you did involve Social Services?

A: Yeah, I went to their office. I phoned them numerous times and then I decided it would be better if I just went in and talked to her myself.

C: And did you find they were helpful at all or . . . ?

A: No, it didn't really . . . they just said there wasn't much they can do because there was no legal order between us for him.

C: Okay.

A: And because that's his Dad then . . .

C: Yep. Okay. Have you ever applied for an Emergency Protection Order before?

Because the Court enquires directly about the quality of the social response the Applicant received from "**Social Services**", the Applicant is able to detail more fully her rationale for pursuing the EPO. Moreover, the Court is able to show that it understands how important social responses are to the Applicant, both practically and symbolically.

In another case, the Respondent raped, physically assaulted, and harassed the Applicant and her family:

C: Okay. The incident that's bringing you here today to make this application, has it been reported to the police either yourself or anyone else to your knowledge?

A: By my Mom.

C: And what did the – how did the police respond?

A: They just said that we should write down notes, to see how it goes, and – they can't really do anything at the – at the moment.

C: Okay. Okay, so what is it that's happened recently to bring you to make the application today?

[Omitted many pages of transcript]

Here the Court first asks if the Applicant has "**reported to the police**", perhaps to assess her own response and perception of risk. Importantly, when the Applicant responds that her "**Mom**" reported "**the incident**", the Court follows-up to ask how the police responded. This gives the Court a better sense of the circumstances facing the Applicant.

Later in the hearing, the police response is brought up again, this time by the Applicant.

A: Yeah, and that's what made my mom and dad even madder. They said he wasn't allowed to come around here at all. And he would like try to get them mad. The police said that he – he—likes to get people mad, so they can like hit him or something so he can press charges against them.

C: Okay. The R.C.M.P. . . .

A: [inaudible]

C: Told you this?

A: Yes. And the police said the best thing for my parents to do is just ignore him and don't talk to him or don't yell at him or anything.

C: Okay.

A: 'Cause he can charge you with whatever you do. And now he's just using that against my mom and dad and it's really getting to them.

C: Okay.

[Omitted approximately a page]

C: So. You know –so—I mean as –as soon as—you know, and again, yes, I'm not saying the order will be granted yet, I haven't made that decision yet. But if it is granted it's effective right away, and as soon as the R.C.M.P. can serve a copy on Mr. XX then, you know, then it's totally enforceable, which means that if –if there's an order in effect and he still shows up at your door, you can call the R.C.M.P. and the R.C.M.P. have grounds to arrest him for breaching the emergency protection order.

A: Well . . .

C: So there wouldn't necessarily . . .

A: The police have been looking for him since August.

C: They've been looking for him since August?

A: Yeah, but . . .

C: For . . .

A: He hides pretty good.

[Omitted two turns]

At this point, the Applicant has reported that the police, though giving advice and trying to be helpful, have not been particularly effective. Notably, the Applicant feels able to give the Court this information, in part we suspect, because the Court enquired about the quality of the police response earlier, indicating its interest in the topic. The Applicant can now feel the Court is aware that the police may have trouble enforcing the EPO. The Court can begin to orient itself to this fact, which it does repeatedly below.

C: Okay, so if they've been looking for him but he's been coming around your place regularly, they just haven't been able to catch him at your place?

A: Yes. He goes some [sic] houses to houses so the police can't figure out where he is.

C: Okay. Okay. You know what, we'll deal . . . we'll deal with that later. If . . . if I make a decision where we need to deal with that. Okay, so . . .

Later, after the EPO has been granted, the Court re-introduces the topic of the police serving the Respondent:

C: He has to be given a copy of the order, yes. So, now, the –the order is in effect, okay. The thing is it can't really be enforced without him knowing that the order exists. So, what you need to do, okay, is if he calls you before he's been served – like, if the R.C.M.P. can't find him or whatever, and if he calls you, and he tells

you where he is or that he's coming over or whatever, first thing you do as soon as you hang up is you call the R.C.M.P. -- R.C.M.P. and tell them, he just called here, he told me this, you know. Either he told me where he is or he told me that he's coming over here right now. Then the R.C.M.P. can be prepared to try and catch him wherever –wherever it is that he says he's gong to be, okay?

A: [inaudible]

C: So, you know, if he shows up at your door unexpectedly, the first thing you do before you answer the door is you call the R.C.M.P. and tell them he's here right now. Okay, and then they can get their – get—they can get there as soon as – right way [sic]. Both to remove him from the property and to serve him with the order.

A: Okay.

C: So that he's – he's got the order, okay. So, unfortunately in this circumstance that puts an awful lot of responsibility on you to try and communicate with the R.C.M.P. whenever you hear from Mr. XX but in the circumstance unfortunately that's the best that we can do. Now, by the same token, the R.C.M.P. in [town] will be getting a copy of it, as will the Operations Centre of the R.C.M.P. here in [city] and I'll be sending a copy to Ms Y for her files. But once the R.C.M.P. get the order, the fax – they'll receive it by fax. Once they have it, they're supposed to start looking for him right away. Okay?

A: Okay.

C: Emergency protection orders are considered serious documents, okay. It's a serious thing. So—so they're – they're not going to be slacking off, they're supposed to be out there looking for Mr. XX. Okay?

A: Okay.

C: But if you hear from him first, make sure and call the R.C.M.P. right away and let them know what – what he's told you.

A: Okay.

Support Person: Don't you tell him about the order.

C: That's right. Don't you tell him about the order, because that – that could just get you in more trouble with Mr. X. He might – he might react badly, and might also make it harder to find him.

A: Okay.

C: If he calls you, just talk to him like you normally would, and then hang up the phone and call the R.C.M.P. and just tell them, I just talked to him, he's told me this. And then they know what's going on as well.

A: Okay.

C: Okay, but don't – don't tell—you don't need to tell Mr. X about the order because you don't need him reacting to that before he's actually got it.

A: Okay.

C: Okay. So, as I said, is –were—were there any other conditions . . .

Having noted that the Respondent is at large and hiding, and that the police have not been able to locate him, the Court stresses that the EPO is "**serious**", and therefore should be a priority for the police. The Court then acknowledges the burden of responsibility placed on the Applicant to talk to the police and take precautions. This added level of overt concern about the safety of the Applicant is appropriate and realistic, and made possible because the topic of the police response was pursued initially.

The Applicant states that she does not want any communication with the Respondent. The Court then asks about visitations:

C: What I'm just trying to do is if you're visiting your kids or you guys want to set it up, how do you want to set it up?

A: No, he doesn't want, he doesn't want me to have nothing to do with my kids.

C: It's not what he wants. What I'm asking you is how do you want this dealt with? Like, I'm not getting into the issue of who's kids or legal battles—

A: Oh, okay.

C: I'm just saying, if it's involving your children, how do you want this to be dealt with? Do you want him to contact the Detachment?

A: Yes.

Police: Not us.

C: Not you? Okay. So is there—

A: Probably through my case worker.

C: Okay. So, okay--

Here we begin to see the hint of a disparity between the suggestion of the Court, that the Applicant might "**contact the detachment**", and the preference of the police, "**Not us**". The Applicant solves the apparent dilemma with another suggestion, "**Probably through my case worker**". Had the Court not enquired about the quality of police responses earlier, the Applicant may not have felt empowered to suggest an alternative.

The EPO Law and Its Application

Definition of Violence

The Act (PAFVA) defines "family violence" such that many of the most common forms of violence against family members are explicitly covered under this act (see sec 1(2) p. 4-5). For example, the act recognizes that family violence is committed both through intentional acts that violate another, threaten to violate another, or place another at risk through recklessness or omission. The act defines family violence as:

> "Intentional or reckless act of omission that causes bodily harm or damage to property"
>
> "Intentional, reckless or threatened act or omission that causes fear" for the Applicant or her child(ren)

In short, the law is written such that if the Respondent has committed any intentional acts, reckless acts, or acts of omission that cause harm to the Applicant her children, or children in her care or causes damage to her property, then violence has been committed. The acts need not have been carried out, threats are also recognized in the act as constituting violence. As such, the law covers common forms of violence against women and children such as reckless driving, physical assault, and verbal threats. As written, the law as written enables the Court to take action when family violence has occurred. An insightful aspect of the law is that it clearly states that if the Applicant fears for her or her children's safety, then the Court has sufficient grounds for granting an Emergency Protection Order.

Given that we only analyzed transcripts where the Court granted the Emergency Protection Order, it was surprising to find that the Courts often focused more on commonly recognized acts of physical assault rather than all forms of violence covered under the Act.

Focusing on all the forms of violence covered in the act will garner the best information for understanding whether the Applicant or her children are in immediate danger. The Court's assessment of risk will also be aided by examining the strategies used by the perpetrator to increase the risk to victims. For example, taking the family money, interrogating children about the Applicant's activities to induce fear, emotionally abusing the Applicant or her children, presenting himself as a victim, using the children as a weapon against the women (e.g., custody), and the like to keep the Applicant from leaving. Moreover, the Court's assessment of risk to children will be deepened if it recognized that abusing or attacking a woman in front of her children is abuse against the children. It is traumatizing, horrifying, and harmful for children to watch their mothers be physically or psychologically harmed.

Leaving Area

In some cases, the Court stated that if the Respondent or Applicant were to leave the area, then the EPO could not be granted. If this is an accurate interpretation of the legislation, then it is a gap that needs to be filled. If the Applicant is planning to flee, the Courts should do everything it can to offer the Applicant protection. The risk to her and her children does not stop or appreciably diminish simply because a greater physical distance is between the Applicant and the Respondent. In fact, at times leaving the area may increase the risk to the Applicant or her children because she may not have anyone to support and to help protect

her, will not know where the Respondent is and so will not be able to take extra safety measures when necessary, and will not be able to monitor the respondent to assess whether he is likely to attack imminently. Therefore, Emergency Protection Orders should be granted even when the Applicant or Respondent are leaving town.

Timeframe

The act states that in order for an Emergency Protection Order to be granted, there must be an immediate danger to the Applicant, her children, children in her care, or to property and assets. Therefore, the Court will assess the applicant's and other's testimony that the current circumstances constitute an immediate danger. Nevertheless, while the law calls for evidence of "immediate danger", the Courts typically looked instead for evidence of immediate violence (or threats thereof). Consequently, the Courts were far more conservative in the functional definition of what constitutes a situation where emergency protection was needed. That is, the Court in most cases did not recognize danger as being sufficient, they wanted evidence of immediate and on-going harm (and even this was sometimes questioned; see victim blaming section). If the Court requires evidence of immediate violence, rather than fear of violence, or risk of violence, it will reduce the preventative power of the EPO legislation and the Courts will once again only be dealing with after-the-fact cases. That is, the law will only be applied to prevent further violence when the risk is beyond a doubt rather than provide protection against the probable commission of violence against family members. The Court's ability to protect vulnerable members of our society against violence would then be greatly reduced.

Also, the Court tended to look for immediate violence by the Respondent and not tightly connect past violence to the current danger. For example, in the case below, the Applicant provided testimony that in the past the Respondent had raped her three times, had strangled her, had left bruises on her arm when he grabbed her, had attempted to manipulate her, had harassed her. Currently, he was engaged in a campaign of harassment, intimidation, against her and her family which included constant phone calls, trespass, damaging property, and threats of violence. The court granted the EPO on the basis that the Respondent would likely **"continue to harass and threaten the Applicant and her family."** This assessment is undoubtedly valid, but it would have been stronger for the Court to connect the Respondent's past violence and abuse with his current ones. For example, the Court could have said something like, "the Respondent current actions indicate that not only will he continue to harass and threaten the Applicant and her family but that he is capable and indeed has committed serious acts of violence, including strangulation, rape, and assault. Therefore, it is clear that the Applicant is in immediate danger from the Respondent."

Given that confirmation decisions were not analyzed in this study, we do not know if the narrow timeframe developed from a too conservative definition of risk being generated and applied in the EPO hearings or from statements from the confirmation decisions. Nevertheless, a connection needs to be made in the EPO hearings between past actions of violence or abuse and current danger. If a Respondent is acting in ways that are similar to how he acted prior to or during his assault of an Applicant, then she is correct in her assessment that she is at high risk of being assaulted again. An Applicant's assessment of present risk and subsequent fear will be tightly connected to her experiences of past violence and abuse.

In these cases, useful question to ask the Applicant include: Are you afraid he will do this to you again? What sorts of things have you been noticing that have made you fearful? These questions will help the Court see the connection between the Respondent's past actions and the Applicant's immediate danger.

EPO Time Limitation

Emergency Protection Orders can be enforced for a maximum of ninety days, and while there are good reasons for limiting the maximum duration of the Orders, such a short time frame may mean that an Applicant may not be able to put things into place to try to increase her safety. This is particularly true if the Applicants feel that they must ask for substantially less than 90 days or the Order will be overturned upon review. It may be that coordinated efforts to support Applicants, including helping them through the process of getting longer-term Protection Orders is needed.

Having Lived Together

The Act was written to allow the state to better respond to violence committed against family members. Given this focus, it is understandable that the act specifies that in cases of violence against a former or current partner, the Applicant and the Respondent had to live together at some point. Nevertheless, this stipulation excludes all of the victims of violence who did not live with the perpetrator from getting the protection of and benefit from this law. The most likely victims of this form of violence will be women and teenaged girls who need protection from violent boys or men. It is not the case that even when girls are still living at home, that their families can adequately protect them from the perpetrator. Rather, the whole family will be at risk of harm from the perpetrator. An analysis needs to be done to ensure

that the women and girls (and also men and boys) are adequately protected by the current laws.

Gang Perpetration of Violence

Victims of spousal violence are sometimes targeted by gang members or friends of the perpetrator. As it stands currently, it is unclear how this act could be applied to such circumstances. The victim could apply for a emergency protection order from her spouse (boyfriend, etc), but would not be able to have any protection under this law from gang members who might work with the perpetrator to harass, intimidate, and assault the her.

CONCLUSIONS

The EPO process provided for in the PAFVA is a crucial and well conceptualized social response to family violence in the NWT. It provides Applicants and their children with a readily available and accountable mechanism for finding safety when violence has occurred or is likely to occur. The legislation is clear but somewhat restrictive, requiring that the Applicant have lived with the Respondent. The GNWT might consider removing this requirement so that the emergency protection orders could be applied to more victims of violence where the victim had once dated the perpetrator. Also, sometimes a victim of violence is at risk of violence not just from her former partner but also those he associates with, such as gang members. The Act could be expanded to cover this form of violence.

Certain applications of the EPO legislation were also problematic. For example, the Court frequently used very narrow definitions of an emergency and typically required that a threat or act of violence or abuse had occurred within a few hours or a few days. Such a limited timeframe is not realistic given the complexity of violence against women and family members. So, too, were the definitions of violence often too narrow. Despite the comprehensive definition of violence within the family violence legislation, the Court frequently focused on stereotypical acts of violence.

In an EPO hearing, the Court must balance procedural and interpersonal demands. While the law dictates the procedures that must be followed and much of the material that must be covered in a hearing, it does not address interpersonal demands. Nevertheless, how something is said or done has huge interpersonal implications that directly impact the Court's ability to effectively and accurately accomplish the procedural demands. For example, how

the Court phrases its request for the Applicant to begin telling about the Respondent's violence or abuse or her fear that he will act in these ways, will influence what information the Applicant provides and how she provides it.

Given the complex demands in EPO hearings, the Court must use particular practices that facilitate the gathering of information so that they are more likely to obtain clear, coherent, and accurate descriptions from the Applicants. Courts using these practices consciously and deliberately will garner the best possible results. In addition to improving the evidence given within the hearings, the practices described in this report are likely to inspire confidence in the Applicant and engender perceptions of procedural and interpersonal fairness. The transcripts reveal that Applicants respond immediately to the practices used by the Court as the hearing unfolds, and work diligently to provide information that the Court might use in its decision-making process.

Our analysis shows that the Court manages the procedural and interpersonal demands of the EPO hearings more effectively sometimes than others. Of particular note were occasions when the Court worked against its own objective of obtaining clear and coherent descriptions upon which to base its decisions. Much of this report illustrates these occasions in detail so that readers will be able to identify and avoid counter-productive practices. By identifying both problematic and effective practices from the EPO transcripts, we hope to support the work of the Court in this challenging and important area of practice.

LIMITATIONS

The present study cannot be treated as representative of the entire body of EPO hearings conducted in the NWT. We examined only positive decisions, where the Court

granted an EPO, and only a small, mostly randomly selected number of cases. Moreover, in all the cases we examined, the Applicants were women and the Respondents were men. We do not know to what extent this is true in the corpus as a whole. Further, we did not review confirmation decisions by the Supreme Court on the cases we examined, and so do not know if the decisions rendered in specific cases were confirmed or overturned on review. Finally, our narrow purpose in this study and report is to provide information that the Court can use in conducting EPO hearings, and the GNWT can use in its review of the PAFVA, not to examine the process from an Applicant or Respondent perspective.

Many, if not most or all, of the Applicants in the cases we examined were of Inuit, Metis, or First Nations descent. As the transcripts did not differentiate between Applicants from different cultural backgrounds, we did not address cultural differences that might be relevant to the EPO hearing process, for example, the preference for giving information without interruption versus the process of question and answer, which is more traditional for people of European descent. However, with no ready information, and no opportunity to discuss possible considerations with the parties involved, we can make no comments on this issue. We believe the cultural identity of Applicants and Respondents and the Court is immediately relevant on several levels and should be considered in subsequent research.

RECOMMENDATIONS

Our recommendations concern future research, consultation on the present study, and training for the Court and related authorities.

Further Research

1. Examine a sample of EPO decisions that are confirmed and over-turned by the Supreme Court, to better understand the application of legal criteria and the intersection of legal criteria and the procedural and interpersonal aspects of the EPO hearing.

2. Conduct a "natural history" analysis by following a sample of specific cases, from disclosure of violence just prior to the EPO application, to the EPO hearing and decision, to implementation of the decision, to responses of the Applicant and Respondent to the implemented decision, and to the subjective experiences of the Applicant and Respondent.

3. Interview Applicants to explore their assessment of, and responses to, the EPO process.

4. That the GNWT review limitations of the current legislation.

Consultation on the Present Study

5. That we meet with GNWT designates, including the Court, to discuss the report in detail after sufficient time for review.

6. That we meet with the representatives from women's and men's organizations to discuss the report in detail after sufficient time for review.

Training

7. That we organize a training, building on the report and the GNWT review of the report, related to the nature of violence and resistance, the role of language, social interaction, and interviewing methods, for the Court and related authorities.

Acknowledgment

We commend the GNWT for its initiative and foresight in developing the PAFVA and the EPO process more specifically. Formal evaluation of these provisions is a matter of

democratic oversight that is too often neglected: We commend the GNWT, again, for the systematic manner in which it has engaged in the evaluation process. We have been fortunate enough to work closely with, and experience the commitment of, GNWT and community members involved in addressing family violence on the level of policy, community development, and direct service. Thank you for your support and encouragement, and for allowing us to contribute in this small way. Finally, we would like to express our respect and gratitude to the Court, whose work in the EPO process substantially increases the safety of Applicants and their families throughout the NWT.