

**TO:** New Jersey Law Revision Commission  
**FROM:** Jennifer Weitz, Counsel  
**DATE:** January 11, 2021  
**RE:** The Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act

## MEMORANDUM

### Executive Summary

The New Jersey Legislature considers domestic violence a serious crime against society.<sup>1</sup> As a result, the Legislature enacted the Prevention of Domestic Violence Act (PDVA) to “assure the victims of domestic violence the maximum protection from abuse the law can provide.”<sup>2</sup>

Consistent with the Commission’s mandate to consider the work of the Uniform Law Commission<sup>3</sup>, Staff reviewed the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act of 2015 (the “Act” or “RECDVPOA”), which proposes recognition of domestic-violence protection orders across international jurisdictions.<sup>4</sup> To determine whether any, or all, portions of the Act would better protect the citizenry of New Jersey, Staff examined the New Jersey statutes that encompass this area of law.<sup>5</sup>

### Background

The Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act of 2015 (“the Act”) provides for the enforcement of domestic violence protection orders issued by Canadian courts.<sup>6</sup> The good will between the United States and Canada allows citizens to move freely between the two countries. In certain circumstances, this freedom of movement can work against victims of domestic violence.<sup>7</sup>

Canada has granted recognition of protective orders of the United States through the Uniform Enforcement of Canadian Judgments and Decrees Act (“UECJDA”).<sup>8</sup> The RECDVPOA would grant similar recognition to orders of protection from Canadian courts.<sup>9</sup>

The UECJDA and the RECDVPOA are part of state, federal, and international efforts to recognize domestic-violence protection orders across jurisdictions.<sup>10</sup> The United States has been a part of these efforts since 1994, with its enactment of the Violence Against Women Act

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<sup>1</sup> N.J. STAT. ANN. § 2C:25-18 (West 2020).

<sup>2</sup> N.J. STAT. ANN. § 2C:25-17 – 35 (West 2020).

<sup>3</sup> N.J. STAT. ANN. § 1:12A-8 (West 2021).

<sup>4</sup> UNIF. RECOG. AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROT. ORDERS ACT, FINAL ACT with Comments (2015). Available at [www.uniformlaws.org](http://www.uniformlaws.org) (last visited Jan. 9, 2021).

<sup>5</sup> N.J. STAT. ANN. 2C:25-17 *et seq.* (West 2020).

<sup>6</sup> *See* UNIFORM ACT, *supra* n.5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

(VAWA).<sup>11</sup> The full faith and credit provision of the VAWA requires every jurisdiction, nationwide, to recognize and enforce valid protection orders issued in any jurisdiction.<sup>12</sup>

New Jersey has implemented the full faith and credit clause, as well as a suite of other protections for victims of domestic violence, through a combination of statutory provisions, guidelines from the Office of the Attorney General, Rules of Court, and modules prepared by the Administrative Office of the Courts and the Division of Criminal Justice.<sup>13</sup> The primary statutory mechanism for addressing domestic violence is the Prevention of Domestic Violence Act of 1991, N.J.S. 2C:25-17 *et seq.*<sup>14</sup> When it enacted the PDVA, the Legislature stated that,

domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.<sup>15</sup>

While a victim of domestic violence who resides in this state can enforce a protective order issued by the courts of New Jersey, or any other jurisdiction in the country, no mechanism exists for enforcement of a protective order from Canada.<sup>16</sup> Enactment of the RECDVPOA would provide victims of domestic violence the maximum amount of relief under the law while furthering the legislative intent of the PDVA.

### **The Uniform Recognition and Enforcement of the Canadian Domestic Violence Protective Orders Act**

In 2005, the Uniform Law Conference of Canada (ULCC) passed the Enforcement of Canadian Judgments and Decrees Act (ECJDA), which gave full faith and credit to judgments throughout the provinces and territories of Canada.<sup>17</sup> As originally written, the ECJDA provided a mechanism for the enforcement of non-money judgments.<sup>18</sup> In 2007, the ECJDA was retitled the Uniform Enforcement of Canadian Judgments and Decrees Amendment Act, and was amended to recognize tax judgments, with the definition of “Canadian judgment” modified accordingly. The

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<sup>11</sup> Pub. L. No. 103-322, 108 Stat. 1902-55 (codified at various Sections of 8 U.S.C., 18 U.S.C. and 42 U.S.C.).

<sup>12</sup> 18 U.S.C. § 2265.

<sup>13</sup> Jayne J. Johnson, Counsel, *Final Report Relating to Uniform Interstate Enforcement of Domestic Violence Protection Orders Act*, p.6. On file with the New Jersey Law Rev. Comm’n. Available at [www.njlrc.org](http://www.njlrc.org).

<sup>14</sup> N.J. STAT. ANN. § 2C:25-17 *et seq.* (West 2020).

<sup>15</sup> N.J. STAT. ANN. § 2C:25-18. (West 2020).

<sup>16</sup> RECDVPOA, § 2, Comment, p.8.

<sup>17</sup> Enforcement of Canadian Judgments and Decrees Act Comment. Available at [www.ulcc.ca/en](http://www.ulcc.ca/en) (last visited Jan. 9, 2021).

<sup>18</sup> *Id.*

UECJDA was then amended in 2011 to provide for the recognition of foreign civil protection orders, including those of the United States.<sup>19</sup> The ULCC notes that the purpose of newly added Part III is to protect one individual from possible harm or harassment from another individual.<sup>20</sup>

Part III of the UECJDA now recognizes a “foreign civil protection order” prohibiting direct or indirect contact with a protected individual.<sup>21</sup> Specifically, the UECJDA recognizes and enforces only those parts of a foreign order that deal with:

- (a) being in physical proximity to a specified person or following a specified person from place to place;
- (b) contacting or communicating with, either directly or indirectly, a specified person;
- (c) attending at or with a certain distance of a specified place or location; or
- (d) engaging in molesting, annoying, harassing, or threatening conduct directed at a specified person.<sup>22</sup>

It does not address provisions relating to custody and visitation, as those are outside its scope.<sup>23</sup>

The Act is designed to mirror the legal status accorded protective orders from the United States (and other foreign countries) in Canadian courts through the UECJDA.<sup>24</sup> The Act follows the UECJDA in focusing on the immediate threat of domestic violence.<sup>25</sup> Under the Act, a “Canadian domestic-violence protection order” is defined as “a judgment or order issued in a civil proceeding by a court of Canada...” that prohibits a respondent from:

- (A) being in physical proximity to a protected individual or following a protected individual;
- (B) directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
- (C) being within a certain distance of a specified place or location associated with a protected individual; or
- (D) molesting, annoying, harassing, or engaging in threatening conduct directed at

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<sup>19</sup> Amendments to the Unif. Enforcement of Canadian Judgments and Decrees Act – Foreign Civil Prot. Orders, 2011. Available at [www.ulcc.ca/en](http://www.ulcc.ca/en) (last visited Jan. 6, 2021).

<sup>20</sup> UECJDA (2011), Part III, § 9.1, Comment. Available at [www.ulcc.ca/en](http://www.ulcc.ca/en) (last visited Jan. 6, 2021).

<sup>21</sup> *Id.* at Part III, § 9.1.

<sup>22</sup> *Id.* at Part III, § 9.1, Comment.

<sup>23</sup> ECJDA, § 2, Right to register [sic] Canadian Judgment, Comment. Available at [www.ulcc.ca/en/](http://www.ulcc.ca/en/) (last visited Jan. 5, 2021).

<sup>24</sup> RECDVPOA at Prefatory Note.

<sup>25</sup> *Id.*

a protected individual.<sup>26</sup>

These protections are akin to those found in the PDVA. A temporary restraining order under the PDVA may prohibit a respondent from temporarily entering the plaintiff's home, contacting the plaintiff or the plaintiff's relatives, or bothering the plaintiff at work.<sup>27</sup> However, while a protective order issued in New Jersey may address custody of children and child support,<sup>28</sup> the Act takes a more limited approach.<sup>29</sup>

Additionally, the Act enforces only Canadian civil domestic violence orders, and not criminal orders, given the potential problems in enforcing the criminal law of another country.<sup>30</sup> Lastly, the Act limits recognition of protective orders to those issued by courts, and not agencies or any other entity authorized to enter or modify a protective order.<sup>31</sup>

### **Enforcement of Protective Orders Under the Act and Under the PDVA**

The Act relies on enforcement by law enforcement to implement its core purpose.<sup>32</sup> As such, it provides immunity to any official or agency that makes a good faith effort to enforce the terms of the Act.<sup>33</sup> A law enforcement officer shall enforce a Canadian domestic violence protection order if there is probable cause to believe that a valid protective order exists.<sup>34</sup> Any record of such an order that identifies the protected individual and the respondent, and on its face is in effect, supplies probable cause.<sup>35</sup> If no record can be provided, law enforcement may look to other information for a determination of probable cause that a valid order exists.<sup>36</sup> Even after verifying the existence of an order, if law enforcement determines that the respondent has not been notified or served, the officer must first notify the protected individual, and then, consistent with the safety of the protected individual, make a reasonable effort to inform the respondent of the order, notify the respondent of its terms, provide a record of it, and allow the respondent a "reasonable opportunity" to comply with the order before it is enforced.<sup>37</sup>

In addition, the Act notes that a Canadian order is enforceable by a tribunal only if it was issued after the respondent was given reasonable notice and had an opportunity to be heard before the court issued the order.<sup>38</sup> If an *ex parte* order was granted, the respondent must have had

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<sup>26</sup> RECDVPOA, § 2(1). Available at [www.uniformlaws.org](http://www.uniformlaws.org) (last visited Jan. 7, 2021).

<sup>27</sup> N.J. STAT. ANN. § 2C:25-23 (West 2020).

<sup>28</sup> *Id.*

<sup>29</sup> RECDVPOA, § 2. Comment.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at § 3, Comment.

<sup>33</sup> *Id.* at § 6, Comment.

<sup>34</sup> *Id.* § 3(a).

<sup>35</sup> *Id.* at § 3(b).

<sup>36</sup> *Id.* at § 3(c).

<sup>37</sup> *Id.* at § 3(d).

<sup>38</sup> *Id.* at § 4(c)(4)(a).

reasonable notice and an opportunity to be heard within a reasonable time after the order was issued.<sup>39</sup> These protections are consonant with those found in the PDVA.

Under N.J.S. 2C:25-28, if a complaint alleging domestic violence is filed in the Family Part and a protective order is granted, the order, together with the complaint, is forwarded to the appropriate law enforcement agency for service on the defendant.<sup>40</sup> Additionally, under N.J.S. 2C:25-29, a hearing must be held within 10 days of a complaint filed pursuant to N.J.S. 2C:25-28, and a copy of the complaint must be served on the defendant according to the Rules of Court.<sup>41</sup> If there is a criminal complaint arising out of the same incident that forms the basis of the civil complaint, a defendant's (or plaintiff's) testimony cannot be used against the defendant in the criminal proceeding.<sup>42</sup>

Both the Act and the PDVA contain provisions providing immunity for law enforcement. The Act provides immunity from civil and criminal liability to any state, state agency, local government agency, law-enforcement officer, prosecuting attorney, clerk of court, and state or local government official for any act or omission arising out of enforcement of a Canadian domestic violence protection order, or the detention or arrest of an alleged violator of such an order, if done as a good faith effort to comply with the act.<sup>43</sup>

The PDVA also extends immunity to any law enforcement officer or a member of a domestic crisis team, or any person who, in good faith, reports a possible incident of domestic violence.<sup>44</sup> Such an individual will not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other act or omission made in good faith.<sup>45</sup> Thus, regardless of the origins of a protective order, any individual in any of the categories noted above who acts in good faith will be immune from liability, whether under the Act or the PDVA.

The Act has been enacted in six states since its release by the ULC. Although a number of bills concerning domestic violence have been introduced in the Legislature this session, none of them appear to address the issue covered by the Act.

## Conclusion

The Uniform Law Commission identified “the problems and dangers created in a world without cross-border recognition of domestic-violence protection orders.”<sup>46</sup> The Act would join

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<sup>39</sup> *Id.* at § 4(c)(4)(b).

<sup>40</sup> N.J. STAT. ANN. 2C:25-28(l). (West 2020).

<sup>41</sup> N.J. STAT. ANN. 2C:25-29(13)(a). (West 2020).

<sup>42</sup> *Id.* Testimony may be used in cases involving domestic violence contempt, and where it would be admissible hearsay if a party is unavailable.

<sup>43</sup> RECDVPOA, at § 6.

<sup>44</sup> N.J. STAT. ANN. § 2C:25-22. (West 2020).

<sup>45</sup> *Id.*

<sup>46</sup> RECDVPOA, Prefatory Note.

VAWA and the UECJDA in providing comprehensive protection to victims of domestic violence consistent with the New Jersey Legislature's intent as set forth in the PDVA.

Staff seeks any input that the Commission wishes to offer at this early stage of the project that would help shape the direction or scope of Staff's work.