



BRITISH
COLUMBIA



Community
Coordination
For Women's Safety

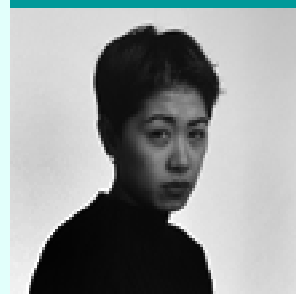
From Paper to Protection: Community, Police, and Government Working Together to Enforce Protection Orders

World Conference on the Prevention of Family Violence
Banff, Alberta ■ October 2005

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Solicitor General

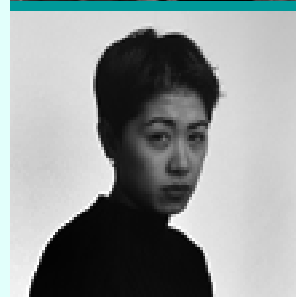
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Women's Safety Program

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Workshop Overview

- Definition of Terms
 - Types of Orders
- Challenges
 - The Need for Effective Enforcement
- Strategies
 - Practice, Policy and Law Reform
- Questions for Discussion



THE VANCOUVER SUN

Mission RCMP deny knowing about Heron's wife's fears: Woman shot to death by husband sought his restraint four days earlier

Vancouver Sun

Thursday, May 29, 2003 | Page: B2 | Section: News | Byline: David Hogben

Source: Vancouver Sun

Mission RCMP say they knew nothing about an affidavit a frightened **Sherry Heron** filed with the B.C. Supreme Court four days before her husband gunned down her and her mother in a Mission hospital room.

According to the affidavit, Sherry Heron, 41, feared her estranged husband would track her down to the hospital bed where she was dealing with the crippling effects of multiple sclerosis.

"I do not want the defendant anywhere near me or my family.

"If there is no order against the defendant then he is likely to come to the hospital to visit me and I do not wish this to take place," she wrote in her affidavit filed May 16 in a New Westminster court.

Heron, who was a patient, and her mother Anna Adams, who was visiting, were killed by Bryan Bruce Heron, 52, on May 20 when he went to Mission Memorial Hospital. Heron, who had been served with the restraining order before the killings, shot himself to death when police were closing in three days later.

Sherry Heron told the court her husband owned four hunting rifles and "another weapon similar to a shotgun" as well as archery equipment and possibly a crossbow.

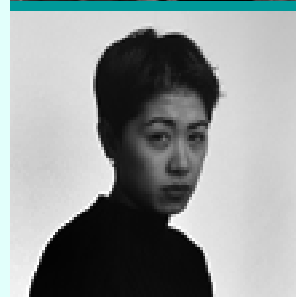
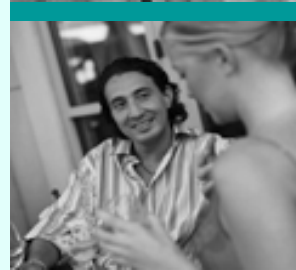
"I am fearful that the defendant could come after me with his weapons. He has threatened to harm me and my family if I leave him," she wrote two days after leaving her husband.

"I felt under a considerable amount of mental stress and I am seeking the protection of the courts because of the threats he has made against me and the weaponry that I know he possesses."

Immediately after the double shooting an RCMP spokesman told reporters: "At no time did she indicate that she was threatened or that she had been a victim of past violence."

Wednesday, a Mission RCMP spokesman said police wish they had known of the affidavit. "It stands to reason, the more information you have the better decisions you can make," Mission RCMP Staff Sergeant Jack Robinson said in an interview. "We knew nothing of the contents of the affidavit."

An RCMP inspector from another Lower Mainland detachment is to determine whether the Mission detachment handled the case properly.



Introduction: Definition of Protection Order

- A **protection order** is an order containing a condition that affords safety and security to a named person or persons.
- If the only condition is to “keep the peace and be of good behaviour,” the order is not a protection order.



Introduction: Definition of Protection Order

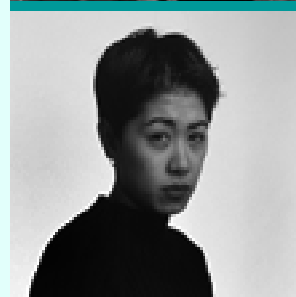
- A condition that protects non-personal objects such as property or assets, or that protects community in general, does not make an order a protection order.

[Source: BC Protection Order Registry]



Types of Protection Orders

- A variety of protection orders can be used in violence against women in relationships (or domestic violence) cases.
- Criminal orders include:
 - Judicial Interim Release Orders (Bail)
 - Police Release on a Promise to Appear with an Undertaking
 - *Criminal Code* and *Youth Criminal Justice Act* Recognizances (Peace Bonds)



Types of Protection Orders

- Common Law Peace Bonds
- Probation Orders
- Conditional Sentence Orders
- Family Law/Child Protection Orders in British Columbia:
 - *Family Relations Act*
 - s. 37 Order restraining harassment
 - s. 38 Order prohibiting interference with the child—no enter/child residence



Types of Protection Orders

- *Child, Family and Community Service Act*
 - s. 28 Protective intervention order
 - s. 98 Restraining order to prevent exploitation, abuse or intimidation of child or to protect caregiver

- *Family Maintenance Enforcement Act*
 - s. 46 Order prevents person named in the order from harassing, annoying, molesting or trying to communicate with another person who has a court order for maintenance against their partner



Types of Protection Orders

- Protective conditions imposed pursuant to the *Immigration and Refugee Protection Act*
 - The immigration appeal division can stay the issuance of a removal order for a permanent resident convicted of assault and place the abuser on terms and conditions. If these are breached, the stay is lifted and the removal process is again triggered.

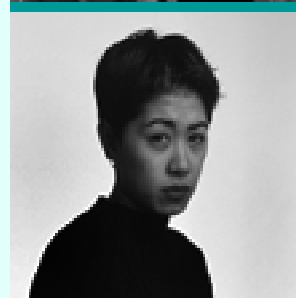


Challenges — the Need for Effective Enforcement

- Practice Issues

- Certain factors are unique to violence against women in relationships cases:

- Ongoing contact and/or dependency between victim and defendant
 - Pressure put on victim by defendant to have the order varied
 - Issuance of “mutual” restraining orders is usually inappropriate

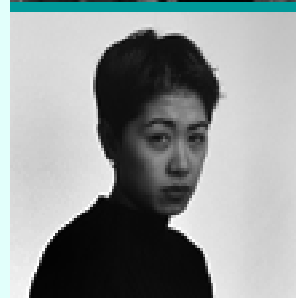


Challenges — the Need for Effective Enforcement

■ Practice Issues

- How is the criminal justice system responding to breaches?
 - A need for more effective enforcement has been identified
 - Rates of non-compliance with protective conditions appear high and breaches are associated with increased risk
 - Research suggests breach charges are uncommon and breach convictions difficult to obtain
 - Lack of systematic data collection on how the criminal justice system is responding to breaches

[EKOS Research 2000; Joint Committee on Domestic Violence 1999; Lloyd 2000; Meredith 1995; Plecas 2000; Russell 2001; Varcoe, Jaffer and Kelln 2000]

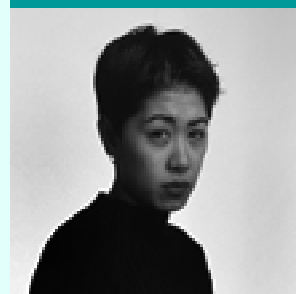


Challenges — the Need for Effective Enforcement

- Practice Issues

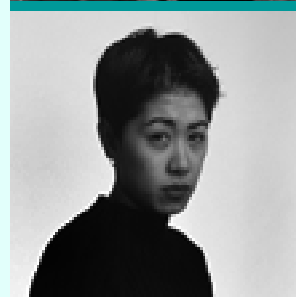
- Consequences if the order is not enforced:

- The victim, assuming she is protected, may be lulled into a false sense of security and may not take the necessary precautions
 - The violence may escalate
 - The victim may feel negative and cynical about the justice system and less willing to use it in future
 - The defendant has time to apply pressure on the victim and break her resolve to pursue the matter further



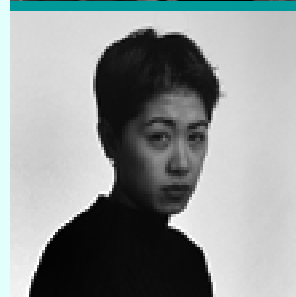
Challenges — the Need for Effective Enforcement

- Policy/Legal Issues
 - Coordinating the different response systems and players involved is complex, e.g. child welfare, family courts, criminal courts, medical services, immigration, corrections
 - Lack of clarity about which agency to take the lead in enforcing non-criminal orders



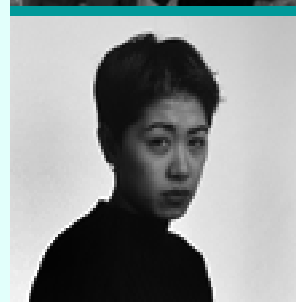
Challenges — the Need for Effective Enforcement

- Policy/Legal Issues
 - Provincial *Freedom of Information and Protection of Privacy Act* and federal *Privacy Act* restrictions on information sharing between systems
 - Absence of provincial or local information-sharing protocols consistent with privacy legislation requirements



Challenges — the Need for Effective Enforcement

- Legal Issues
 - Length of time involved in obtaining the order
 - Legal complexities associated with enforcement:
 - Different order types have different legislative enforcement provisions
 - Questions about police enforcement authority for non-criminal orders



Protection Order Enforcement Matrix – Draft

April 6/draft for discussion ■ ■ ■ PROTECTION ORDER ENFORCEMENT MATRIX

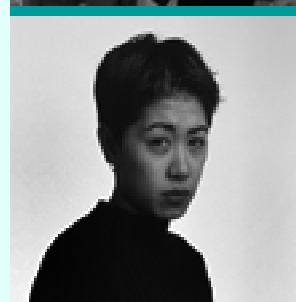
PROTECTION ORDER REGISTRY Orders Pursuant to the *Family Relations Act*, R.S.B.C. 1996, c.128

ORDER TYPE	POLICE ENFORCE-ABLE	SIGNED	DURATION	COURT	ENFORCE-MENT AUTHORITY	ARREST	RELEASE	APPLICABLE POLICY
s. 10 <i>Consent Order</i>	No (see note)	Judge	Term of the order	Supreme Provincial				
s. 35(1) <i>Custody/Access</i> (see under ss. 36(1) and(2) below)	Yes/No (see note)	Judge	Term of the order	Supreme	s. 35(1)	ccc 495 s. 128(3) with warrant	standard release provisions apply	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1
				Provincial	s. 35(1)	ccc 495 s. 128(3) with warrant		
s. 36(1) <i>Apprehend Child</i> (Civil enforcement of custody rights)	Yes	Judge	Term of the order	Supreme	s. 36(1)	ccc 495 s. 128(3) with warrant	standard release provisions apply	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1
				Provincial	s. 36(1)	ccc 495 s. 128(3) with warrant		
s. 36(2) <i>Search premises for child (civil enforcement of custody rights)</i>	Yes	Judge	Term of the order	Supreme	s. 36(2)	ccc 495 s. 128(3) with warrant	standard release provisions apply	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1
				Provincial	s. 36(2)	ccc 495 s. 128(3) with warrant		
s. 37 <i>Order Restraining Harassment</i>	Yes	Judge	Term of the order (until changed)	Supreme	Rule 56/FRA s. 128 (pre-01/09/98) • shall apprehend	ccc 495/Offence Act	bring before Supreme Ct. on next court day; Rule 56(6.1): court may order release of person apprehended	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1

Protection Order Enforcement Matrix – Draft

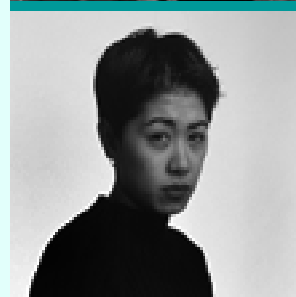
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ORDER TYPE	POLICE ENFORCE-ABLE	SIGNED	DURATION	COURT	ENFORCE-MENT AUTHORITY	ARREST	RELEASE	APPLICABLE POLICY
				Supreme	Rule 56/FRA s.128 (post-01/09/98) • may apprehend	ccc 495/Offence Act	If apprehended, bring before Supreme Ct. on next court. day; Rule 56(6.1) court may order release of person apprehended	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1
				Provincial	FRA s.128	ccc 495 Offence Act/with warrant	standard release provisions apply	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1
s. 38(1)(a) [s. 37(1)(a) RSBC 1979] <i>Order prohibiting interference with child-no enter/child residence</i>	Yes	Judge	Term of the order (subject to continuing custody)	Supreme	Rule 56/FRA s. 128 (pre-01/09/98) • shall arrest	ccc 495/Offence Act (unclear whether Rule 56(5) requires warrant)	bring before Supreme Ct. on next court day Rule 56(6.1) court may order release of person apprehended	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1
				Supreme	Rule 56/FRA s. 128 (post-01/09/98) • may arrest	ccc 495/Offence Act	If apprehended, bring before Supreme Ct. on next court day Rule 56(6.1) court may order release of person apprehended	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1
				Provincial	FRA s. 128	ccc 495 Offence Act/with warrant	standard release provisions apply	Police/RCMP VAWIR; RCMP VIR; Crown: CHA 1



Strategies — the Need for Effective Enforcement

- “Ongoing Contact / Pressure / Mutual Restraining Orders” (CHALLENGE)
 - Policy/practice that requires police, Crown Counsel or a victim assistance worker to meet with a victim before an application to vary a protection order is heard in court
 - Requirement for victim to be present in the courtroom for any application which may effect her safety



Strategies — the Need for Effective Enforcement

- Development of material to be used by and/or distributed by police, Crown Counsel or victim assistance in the course of victim meeting to:
 - provide guidelines to systems personnel on the issues and
 - help inform the victim's decision-making process
- Training on the dynamics of abuse and effective measures for victim support throughout the process



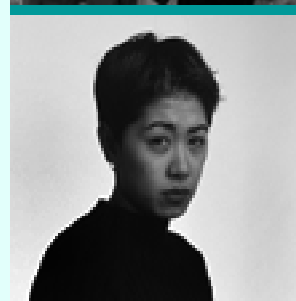
Strategies — the Need for Effective Enforcement

- Mandatory meeting between bail/probation officer and victim with written report of protective measures required or taken
- Policy provisions and training for police/Crown Counsel addressing “primary aggressor” issues and “mutual charging”



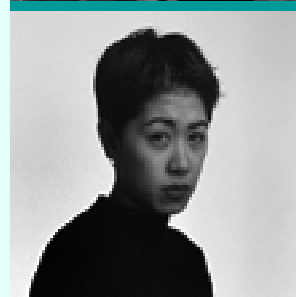
Strategies — the Need for Effective Enforcement

- “Negative consequences if order not enforced”
- “Lack of information sharing”
(CHALLENGES)
 - Policy/practice/training which emphasizes that the victim **must** receive a copy of the protection order and all its conditions
 - Protection orders to be provided to victim assistance workers upon victim consent



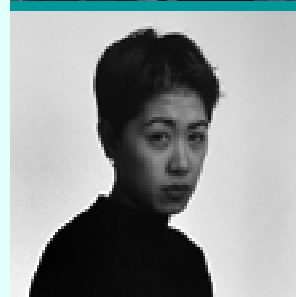
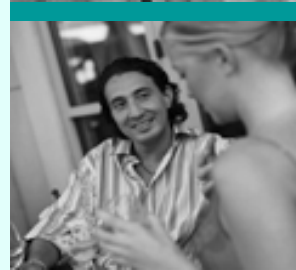
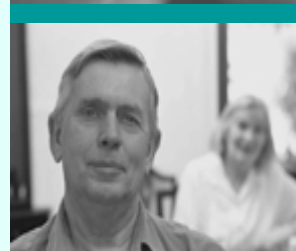
Strategies — the Need for Effective Enforcement

- Information-sharing protocols between police, Crown Counsel, child protection agencies, *Freedom of Information and Privacy Act* officials and victim serving agencies, particularly in regard to “high-risk offenders,” (including release of relevant criminal record information)
- Production and translation of public legal education materials on restraining orders
- Establishment of “Protection Order Registries”



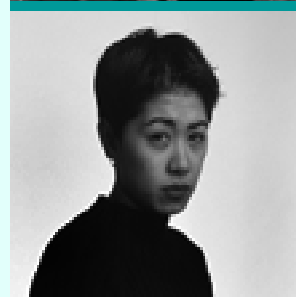
Strategies — the Need for Effective Enforcement

- Development of Protection Order Matrices or Standard Form Protection Orders
- Information gathering and further research on the implications of failing to enforce protection orders



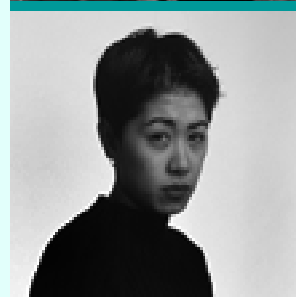
Strategies — the Need for Effective Enforcement

- “Criminal Justice Response” (CHALLENGE)
 - Policy/practice that requires a referral to victim assistance in all cases of violence in relationships
 - Efforts to obtain evidence to support the victim in gaining protection (K.G.B. statements, 911 tapes, medical documentation of injuries)



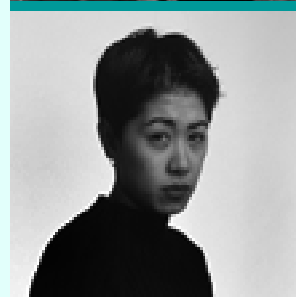
Strategies — the Need for Effective Enforcement

- Expediting cases where protection orders are required – through use of warrants where the grounds to arrest exist, flagging relationship violence cases, establishment of specialized courts
- Legislative amendment in regard to uniform protection orders in all cases of relationship violence
- Amendment to Section 127 of the *Criminal Code*



Strategies — the Need for Effective Enforcement

- Police and victim assistance outlining the limitations of a protection order and helping to develop a safety plan
- Preparation of legal opinions on the potential liability of police for failing to protect



Discussion

- Questions from the floor

