

Reflections on Bill 11: *The Domestic Violence and Stalking Amendment Act*

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I. INTRODUCTION

Bill 11, *The Domestic Violence and Stalking Amendment Act*,¹ was introduced to the Legislative Assembly of Manitoba during the 5th session of the 40th Legislature on November 30th, 2015² and received Royal Assent on March 15th, 2016.³ There are two primary purposes for which the Minister of Justice and Attorney General sought to amend *The Domestic Violence and Stalking Act*.⁴ First, the bill intended to create a less challenging and daunting process for the victim or applicant (the subject) when seeking a protection or prevention order against his or her assailant (the respondent).⁵ Second, it expected to provide greater protection for the subject after an order is granted by controlling the possession of firearms by respondents. Moreover, while the bill did not

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¹ Bill 11, *The Domestic Violence and Stalking Amendment Act*, 5th Sess, 40th Leg, Manitoba, 2015 (assented to 15 March 2016) [Bill 11].

² Manitoba, Legislative Assembly, *Hansard*, 40th leg, 5th sess, No 10 (30 November 2015) at 325 [*Hansard* November].

³ Manitoba, Legislative Assembly, *Hansard*, 40th leg, 5th sess, No 29B (15 March 2016) at 1129 [*Hansard* March].

⁴ *The Domestic Violence and Stalking Act*, CCSM c D93 [The MB Act].

⁵ Gender neutral language is employed throughout this paper because this is not a unilateral issue. While orders are predominately sought by women (see discussion under s III. Justifications for Bill 11, below) there have been instances where men seek orders against women and where women seek orders against other women. See for example: *Ducharme v Borden*, 2014 MBCA 5; *Gale v Gale*, 2006 MBQB 252; *LD v EEOD*, 2003 MBQB 236; *WSC v KAY*, 2008 MBQB 129; *Roberts v Buzan*, 2009 MBQB 5.

expressly grant the power to use GPS monitoring as a means of controlling respondents, according to extensive legislative debate on the issue, the bill has sparked interest in future use of such technology. This paper discusses how the act originated and has been amended since its enactment. Next, it sets out the justification for the bill and provides a summary thereof. The legislative process, including the questions and debate at the second and third reading and the committee stage, is then thoroughly described. Finally, the prospective effects of the bill, both in the short and long term, are analyzed and reflections from beyond the bill are discussed.

II. DESCRIPTION OF THE DOMESTIC VIOLENCE AND STALKING ACT AND ITS ORIGINS

The Domestic Violence and Stalking Act, originally known as Bill 40, was assented to in June of 1998 and came into force as *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* on September 30th, 1999.⁶ This piece of legislation allows victims of domestic violence and stalking to seek protection or prevention orders from designated Provincial Court justices of the peace with or without notice to their alleged assailants.⁷ To seek an order,

[i]n addition to the initiating sworn application, applicants must provide evidence under oath about the stalking or domestic violence. A justice of the peace who finds that stalking or domestic violence has occurred and that the person seeking relief reasonably believes it will continue is able to grant a protection order.⁸

The provisions within a protection order can vary widely, “ranging from prohibiting the respondent from attending at the applicant’s residence or place of employment to peace officer assistance in removing the respondent from premises.”⁹ On the other hand, prevention orders can contain more significant penalties, “such as sole occupation of the

⁶ The MB Act, *supra* note 4; Manitoba Justice, *Domestic Violence, The Domestic Violence and Stalking Act*, online: <<http://www.gov.mb.ca/justice/domestic/prevent.html>>.

⁷ *Baril v Obelnicki*, 2007 MBCA 40 at para 8, [2007] 6 WWR 304 [*Baril*].

⁸ *Ibid.*

⁹ *Ibid* at para 9.

family residence or payment of compensation for monetary losses due to domestic violence or stalking.”¹⁰

Prior to its passing in Manitoba, a similar piece of legislation, *The Victims of Domestic Violence Act*¹¹ was proclaimed in force in Saskatchewan in 1995. The next year, Prince Edward Island proclaimed the *Victims of Family Violence Act*.¹² Subsequently, in November of 1999 the Yukon’s *Family Violence Prevention Act*¹³ came into force and in June of that year, Alberta proclaimed the *Protection Against Family Violence Act*.¹⁴ Each of these acts was modelled after the Saskatchewan legislation and, accordingly, they share a certain commonality.¹⁵

The Saskatchewan legislation was developed by an internal Family Violence Task Force established by Saskatchewan Justice after considering inter-jurisdictional recommendations and studies, as well as extra-jurisdictional evaluations of domestic violence legislation.¹⁶ It became clear after carrying out this review that additional legislation to supplement the *Criminal Code* was necessary since victims of domestic violence did not often seek out intervention agencies, such as the police, when they were in need of protection.¹⁷ In addition, given that the *Criminal Code* provided the only means of legal redress for victims at that time, this “often meant that the point of intervention was delayed, reactive and under utilized.”¹⁸ Accordingly, consultation meetings with 62 agencies including “police, crisis intervention agencies and community agencies which support

¹⁰ *Ibid.*

¹¹ *The Victims of Domestic Violence Act*, SS 1994, c V-6.02 .

¹² *Victims of Family Violence Act*, RSPEI 1988, c V-3.2.

¹³ *Family Violence Prevention Act*, RSY 2002, c 84.

¹⁴ *Protection Against Family Violence Act*, RSA 2000, c P-27.

¹⁵ Cheryl Laurie, “Seeking that ‘Piece of Paper’: An Examination of Protection Orders under The Domestic Violence and Stalking Act of Manitoba” (Masters of Arts Thesis, University of Manitoba, 2006) [unpublished, archived at University of Manitoba Department of Sociology] [Cheryl Laurie].

¹⁶ Jan Turner, Saskatchewan Justice, Public Law and Policy, “Saskatchewan Responds to Family Violence: The Victims of Domestic Violence Act” (May 1995), online: <<http://redengine.lawsociety.sk.ca/inmagicgenie/documentfolder/AC1853.pdf>>.

¹⁷ *Ibid* at 4.

¹⁸ *Ibid* at 3-4.

services for victims” were undertaken which identified “issues which could hamper successful use of the provisions and provided the first indications of the type of impacts which might be anticipated from this innovative initiative.”¹⁹ Finally, the bill was passed on May 10th, 1994.

After several Manitoba women were seriously injured and killed by their stalkers in the 1990s, the Manitoba Law Reform Commission wrote a report on stalking in which it made recommendations to improve “protective civil remedies.”²⁰ In its report, the Commission concluded that in many cases the *Criminal Code* offence of harassment was not creating harsh enough consequences for individuals charged with stalking and was not adequately preventative in nature. Accordingly, the Commission proposed that the legislature enact additional proactive legislation to enable victims of stalking to seek civil remedies in circumstances of harassment instead of relying on the “slow and uncertain” procedures set out in the *Criminal Code*.²¹ In addition, the recommendations were made with the view to lessen the evidentiary burden placed on a victim since civil cases carry a ‘balance of probabilities’ burden versus the higher ‘beyond a reasonable doubt’ standard mandated in criminal cases.²² It was the expectation of the Commission that this provincial legislation would be the key to higher reporting rates in stalking cases and would allow greater access to protection for victims.²³

The legislation was also a response to “fatal incidents of extreme violence perpetrated by...domestic abusers” which were highlighted exhaustively in the media in the 1990s in Manitoba.²⁴ In fact, at the time of its enactment, it was suggested that thirty percent of women who were currently or had previously been married had “experienced at least one incident of physical or sexual violence at the hands of their spouse” in

¹⁹ *Ibid* at 7, 10.

²⁰ Cheryl Laurie, *supra* note 15 at 9.

²¹ *Ibid* at 10.

²² *Ibid*.

²³ *Ibid* at 9-10.

²⁴ Bonnie MacDonald, “The Domestic Violence and Stalking Prevention, Protection and Compensation Act” (2001) 28 *Underneath the Golden Boy*, Man LJ 269 at 269.

their lifetime.²⁵ Therefore, the introduction of the legislation came at a time of urgent need.

While Manitoba's legislation is quite similar to its Saskatchewan model, it differs from it and other provinces most importantly in two ways. First, the Manitoba act creates the separate tort of stalking and gives victims of stalking more explicit protection as opposed to the interpersonal violence legislation in places like Saskatchewan. In addition, Manitoba's act creates a reverse onus on the respondent upon applying to set aside a protection or prevention order.²⁶ If the respondent does not make this application, the order will remain in force. Notably, in the leading case, *Baril v. Obelnicki*, this reverse onus was found constitutional when read down in a manner consistent with the *Canadian Charter of Rights and Freedoms*.²⁷ As a result, a respondent need only show, on a balance of probabilities, that there is an issue arising from the without notice hearing that entitles them to have the order set aside on the basis of absence of full disclosure or based on the weight of all the evidence adduced at both the without notice and review hearings. In other provinces, it is more common for each order to be confirmed by a judge and then notice of the order be sent out to the respondent. The respondent then is able to seek a variation or revocation of the order.²⁸

A. Amendments Subsequent to the Introduction of the Act

The act has been amended on a number of occasions and other legislative changes have resulted in consequential amendments thereto. This section will set out certain noteworthy alterations.

In 2004, Bill 17 was enacted which changed the title of the act by striking out the words "Prevention, Protection and Compensation".²⁹ The

²⁵ *Ibid.*

²⁶ The MB Act, *supra* note 4, s 12(2).

²⁷ *Baril*, *supra* note 7. The reverse onus provision, s.12 (2), was however, read down. This reading down has been upheld to the most recent case involving this Act: *Kostas v Vandermeulen*, 2015 MBQB 212, 325 Man R (2d) 261.

²⁸ *Supra* note 11, ss 5-6.

²⁹ Bill 17, *The Domestic Violence and Stalking Prevention, Protection and Compensation Amendment Act*, 2nd Sess, 38th Leg, Manitoba, 2004 (assented to 10 June 2004), SM 2004 c 13, s 2.

meaning of “domestic violence” was set out and how to determine who commits “domestic violence” was also explained.³⁰ In addition, this amendment act allowed for ex parte protection order applications to be granted. Bill 17 also amended the act by providing that a protection order is deemed to expire within three years of it being granted unless reapplication is sought.³¹

In 2005, the act was amended to give justices of the peace authority to hear and determine applications for protection orders.³²

Further changes to the act were assented to in 2010.³³ Section 7(1)(c.1) was introduced, which allows the respondent to attend a court proceeding that he or she is a party to or is the accused person in where the subject is present.³⁴ He or she may also attend a proceeding in relation to custody, access or a related family matter, a court ordered mediation or assessment, or an investigation or evaluation that has been ordered by the court where the subject is present.³⁵ Furthermore, s. 7(1.1) was included, creating certain conditions with respect to carrying out s. 7(c.1) that seek to protect the subject.³⁶ Finally, s. 7(1.2) states that despite those conditions in s. 7(c.1) the presiding judge or master at a hearing described in that section may make a different order restricting the respondent’s conduct.³⁷ This amendment attempted to balance the rights of the respondent with the safety concerns related to the subject.

³⁰ *Ibid*, s 4.

³¹ *Ibid*, s 8.1(1).

³² Bill 11, *The Provincial Court Amendment Act (Justices of the Peace)*, 3rd Sess, 38th Leg, Manitoba, 2005 (assented to 9 June 2005), SM 2005, c 8, s 3(1).

³³ Bill 19, *The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended)*, 4th Sess, 39th Leg, Manitoba, 2010 (assented to 17 June 2010), SM 2010, c 17.

³⁴ *Ibid*, s 4(1); The MB Act, *supra* note 4, s 7(1) (c.1).

³⁵ *Ibid*.

³⁶ The MB Act, *supra* note 4, s 7(1.1).

³⁷ *Ibid*, s 7(1.2).

III. JUSTIFICATION FOR BILL 11

Similar to the circumstances surrounding the introduction of the act in 1999, the need for Bill 11 became apparent after the murder of two young Manitoba women: Selena Keeper and Camille Runke. On October 8th, 2015, Selena Keeper was beaten to death by her former boyfriend five months after being denied a protection order against him on the basis that she was not in imminent danger.³⁸ Camille Runke was found shot to death on October 30th, 2015, the same year that she had a protection order granted against her estranged husband and had engaged the police 22 times to deal with him breaching that order.³⁹ Kevin Runke, who was suspected of her murder, shot himself sometime after her death.⁴⁰ During the second reading of the bill on December 1st, 2015, the Minister of Justice and Attorney General, Honourable Gordon Mackintosh (“Mr. Mackintosh”) confirmed that the deaths of these women “highlighted the need to take a hard look at both the application process and the conditions that can be included when a protection order is granted.”⁴¹ To further illustrate the necessity of these amendments, during the second reading of the bill, Mr. Mackintosh also articulated that in the past two years, 1237 ex parte protection orders were granted in favour of subjects, but 1753 were dismissed.⁴² This resulted in a 59% dismissal rate.⁴³ He explained that in many cases, these orders were dismissed on the basis that

³⁸ Chinta Puxley, “Changes coming to Manitoba protection orders after woman beaten to death”, *The Globe and Mail* (02 November 2015), online: <<http://www.theglobeandmail.com/news/national/changes-coming-to-manitoba-protection-orders-after-woman-beaten-to-death/article27071823/>>.

³⁹ “‘This is tragic,’ Winnipeg police say of Runke’s death”, *CBC News* (03 November 2015), online: <<http://www.cbc.ca/news/canada/manitoba/this-is-tragic-winnipeg-police-say-of-camille-runke-s-death-1.3301225>>.

⁴⁰ *Ibid.*

⁴¹ Manitoba, Legislative Assembly, *Hansard*, 40th Leg, 5th Sess, No 11B (1 December 2015) at 400 (Hon Gord Mackintosh) [*Hansard* December].

⁴² *Ibid* at 403. See also *Baril*, *supra* note 7 at para 97, which states that rates of dismissal steadily declined from 2001-2007.

⁴³ *Hansard* December, *supra* note 41 at 403 (Hon Gord Mackintosh).

women were living in a shelter or the respondent was in jail and were thought to be of no danger to the subject.⁴⁴

In addition, the Keeper and Runke cases highlight the continued need for protection for women in domestic violence and stalking situations. While it is true that both men and women seek protection orders, in 2007, the Manitoba Court of Appeal in *Baril v. Obelnicki* confirmed that stalking has an “overpowering impact on the victim, usually a woman, and [it is necessary] for the law to assist the stalking victim to sever her interaction with the stalker in order to protect herself.”⁴⁵ This statement was quoted with approval most recently in *Steinmann v. Kotello*.⁴⁶ The Court is, therefore, of the opinion that the protection of women is still a relevant justification for the act. Legal scholar Dr. Linda Neilson has further asserted the following:

While either men or women can be targeted by [domestic violence], and anyone who is targeted and is genuinely fearful is deserving of protection, nuanced understandings of the complexities of [domestic violence] make it clear that women are, as a result of social and cultural expectations associated with gender, the primary targets of coercive [domestic violence].⁴⁷

Finally, this explanation for the bill was supported by Honourable Jon Gerrard, member of the Legislative Assembly, who stated during the third reading that 80% of intimate partner violence cases involve women as victims.⁴⁸

Considering the aforementioned statistics evidencing the rate of applications for protection orders currently being dismissed and given that the protection of women in domestic violence and stalking circumstances is still highly material, strengthening the legislation seems appropriate.

⁴⁴ *Ibid* at 403-404.

⁴⁵ *Baril*, *supra* note 7 at para 82.

⁴⁶ 2012 MBCA 30 at para 22, 2012 CarswellMan 151.

⁴⁷ Dr. Linda C. Neilson, “Enhancing Civil Protection in Domestic Violence Cases: Cross Canada Checkup” (March 31 2015) Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick 1 at 7-8.

⁴⁸ Manitoba, Legislative Assembly, *Hansard* 40th Leg, 5th Sess, No 24 (7 March 2016) at 874 (Hon Jon Gerrard) [*Hansard* March].

IV. SUMMARY OF BILL 11

This section describes the most significant changes Bill 11 will make to the *The Domestic Violence and Stalking Act*. It is worth noting that many of these amendments will bring the legislation more in line with the Saskatchewan legislation which indicates the persuasiveness of that model.

Bill 11 amends s. 1 of the act which encompasses the definitions of the terms used within the act. Of note, the term “telecommunication” now includes a telephone, the Internet, e-mail or fax, and the terms “chief firearms officer” and “firearm” are also added and defined as these terms will become relevant to the act.⁴⁹

Subsection 2(3)(b.1) expands the meaning of “domestic violence” for the purposes of the act. Domestic violence now includes “using the Internet or other electronic means to harass or threaten the other person”.⁵⁰

The bill also amends the act by adding s. 3(2) which clearly states the standard of proof that the subject must satisfy during an application hearing. The section states, “all determinations made by a designated justice of the peace on an application for a protection order are to be made on the balance of probabilities”.⁵¹ While the former act set out the standard of proof at s. 6 (1), it was not a distinct and separate section. It is possible that this distinction has been made to provide clarity and certainty to this area of the law. Given the significant rate of protection orders being dismissed at this time, this clear provision should signal to the triers of fact that the subject must not be held to too high of a standard when providing evidence.

A new provision, s. 4(2.1), will be included in the act which gives power to the designated justice of the peace to “adopt any procedures he or she considers appropriate to put the subject at ease and to help the subject understand the application process” during a hearing for a

⁴⁹ *The Domestic Violence and Stalking Act*, CCSM c D93, s 1(1), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 2.

⁵⁰ *The Domestic Violence and Stalking Act*, CCSM c D93, s 2(3)(b.1), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 3.

⁵¹ *The Domestic Violence and Stalking Act*, CCSM c D93, s 3(2), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 4.

protection order.⁵² This section permits the justice of the peace to play a more active role in a protection order hearing by providing guidance and legal advice to the subject, where appropriate. While this provision will help ensure that subjects feel more comfortable with the process, it may be problematic as it risks resulting in a somewhat imbalanced process whereby the subject is afforded more procedural rights than the respondent. While it is undisputed that assisting a subject in the application process is beneficial to that individual, this amendment seems to disrupt the impartiality expected of the justice system.

Section 4(4) is added to the act, allowing the subject and any other person who may submit an application on their behalf to make submissions to the designated justice of the peace respecting the application.⁵³ Whereas the former act seemed to allow for persons other than the subject to submit an application in writing, this provision seeks to allow that individual to also make oral submissions on behalf of the subject. This will be beneficial to the subject who is in a particularly vulnerable state given the necessity of seeking a protection order and could help to put forth a more sound and clear case before the justice of the peace. This could in turn allow for more protection orders granted. Further, s. 4(5) is introduced, allowing the subject applying for a protection order in person to be accompanied by a family member, friend or other support person.⁵⁴ This will put the subject at ease and may, accordingly, allow for a more effective review of the evidence. The former act did not explicitly allow for support persons to attend the hearing, but this new provision provides clarity on the issue.

Section 6(1), dealing with granting protection orders without notice, is amended by striking the requirement that the subject show *imminent and immediate* need for protection to the justice of the peace and replacing it with the requirement to demonstrate circumstances which are *serious or urgent*.⁵⁵ This language was adopted into the Saskatchewan legislation in

⁵² *The Domestic Violence and Stalking Act*, CCSM c D93, s 4(2.1), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 5(1).

⁵³ *The Domestic Violence and Stalking Act*, CCSM c D93, s 4(4), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 5(2).

⁵⁴ *The Domestic Violence and Stalking Act*, CCSM c D93, s 4(5), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 5(2).

⁵⁵ *The Domestic Violence and Stalking Act*, CCSM c D93, s 6(1) as amended by Bill 11, *The*

2015.⁵⁶ It is yet to see whether this has made a significant impact in Saskatchewan and whether this will, in fact, affect the number of ex parte orders being granted in Manitoba.

One of the major changes the bill makes is the addition of s. 6.1(1) which will guide the justice of the peace's determination in a hearing for application of a protection order. The section requires that a set of risk factors be taken into account when coming to a decision in addition to any unique factors that the subject presents.⁵⁷ This provision is significant as it creates a mandatory exercise for the justice of the peace and will create more consistency in the granting of protection orders since it requires the consideration of factors that may not be raised by the subject. The risk factors include:

- (a) the history of domestic violence or stalking committed by the respondent
- (b) the nature of the domestic violence or stalking committed by the respondent
- (c) whether the domestic violence or stalking is repetitive or escalating
- (d) whether the domestic violence or stalking is evidence of a pattern of coercive or controlling behaviour respecting the subject
- (e) other previous incidents of violence committed by the respondent, including any violence against animals
- (f) any mental health concerns involving the respondent
- (g) the current status of any relationship between the subject and the respondent, including any recent separation or intention to separate
- (h) any other circumstances of the respondent that may increase the risk to the subject, such as
 - i. substance abuse
 - ii. employment or financial difficulties; or
 - iii. access to firearms or other weapons
 - (i) any circumstances of the subject that may

Domestic Violence and Stalking Amendment Act, s 6.

⁵⁶ Bill 144, An Act to Amend *The Victims of Domestic Violence Act* and to make a consequential amendment to *The Adult Guardianship Co-decision-making Act*, 4th sess, 27th Leg, Saskatchewan, 2014, s 6 (assented to May 14, 2015).

⁵⁷ *The Domestic Violence and Stalking Act*, CCSM c D93, s 6.1(1) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 7.

(ii) increase the risk to the subject, such as pregnancy, age, family circumstances, health or economic dependence.⁵⁸

It is worth noting that the Saskatchewan legislation also requires that the designated justice of the peace consider certain similar factors upon determining whether a protection order should be made.⁵⁹

Another mandatory provision found within the bill is s. 6.1(2), which requires the justice of the peace to consider any information available from court registries respecting criminal or family law proceedings involving the respondent in a protection order hearing.⁶⁰ This information will form part of the record. This is an important amendment because in the past, an ongoing proceeding might have discouraged a justice of the peace from granting an order given the possibility that any court ordered sanction would give the subject the protection he or she needed. For example, in *TJH v. TCN*, the court was uncertain whether a protection order could be ordered at all while a family court proceeding involving the parties was ongoing.⁶¹ Therefore, going forward, evidence of criminal or family proceedings may, in fact, lead to the granting of an order as it has been determined that this tends to further support the need for emergency protection.⁶² It should be noted that this amendment can only be effective if the court registries and the police records are up to date and there is enough current information available for the justice of the peace to have an accurate picture respecting the respondent.

The bill also introduces s. 6.1(3), which sets out the circumstances that should not lead to the denial of a protection order. It is likely that this provision reflects the abundance of orders being refused on the basis of these particular circumstances. They include:

- (a) a protection order has previously been granted against the respondent, regardless of whether the respondent has complied with that order;
- (b) the respondent no longer resides in the subject's resident or in the same community where the subject resides;

⁵⁸ *Ibid.*

⁵⁹ *Supra* note 11, s 3(2).

⁶⁰ *The Domestic Violence and Stalking Act*, CCSM c D93, s 6.1(2) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 7.

⁶¹ 2005 MBQB 25 at paras 17, 21, 2005 CarswellMan 39.

⁶² *Ibid.*

- (c) the respondent is incarcerated at the time the application is made;
- (d) criminal charges have been or may be laid against the respondent;
- (e) the subject is residing in an emergency shelter or other safe place;
- (f) the subject has a history of resuming a relationship with the respondent.⁶³

While the language of this section is permissive in nature, one can expect that the amendment may lead to the justices of the peace turning their mind to these circumstances and accepting that these should not be bars to denying a protection order. Again, it is significant that the Saskatchewan domestic violence legislation already includes a very similar provision.

The bill also amends the act by including s. 6.2, the requirement that the justice of the peace provide oral reasons at the time he or she makes a decision on an application for a protection order.⁶⁴ This change begs the question: are justices of the peace currently providing no reasons for their decisions and effectively leaving subjects in the dark as to why they are unsuccessful in their application?⁶⁵ Providing reasons affords respondents more natural justice and procedural rights and allows the subject to more effectively make a future application. In addition, it requires the justice of the peace to consider the reason for denying the application and to be less arbitrary with respect to the process.

One of the most significant amendments to the act is the addition of s. 6.3. This provision involves notifying the chief firearms officer of all protection orders granted and requires that the justice of the peace who grants the protection order provide a copy of the order to the officer.⁶⁶ This mandatory provision seeks to ensure that the chief firearms officer is

⁶³ *The Domestic Violence and Stalking Act*, CCSM c D93, s 6.1(3) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 7.

⁶⁴ *The Domestic Violence and Stalking Act*, CCSM c D93, s 6.2 as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 7.

⁶⁵ While it is difficult to determine whether reasons are currently given in protection orders hearings without access to them, it is clear that reasons are given during applications to vary or set aside an order under s 12 (2) because these are heard by the Queen's Bench and are available for analysis. See for example, *Roberts v Buzan*, 2009 MBQB 5 at para 25.

⁶⁶ *The Domestic Violence and Stalking Act*, CCSM c D93, s 6.3 as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 7.

aware of all protection orders when a respondent seeks to obtain or sell a firearm lawfully. Practically, it is uncertain whether this will stop a domestic violence offender or stalker from obtaining a firearm through other means, but it remains advantageous to involve the chief firearms officer with every order.

Further, s. 7(1)(g) is amended by narrowing its scope. The new provision will exclude explosive substances from the list of weapons that a respondent may be ordered to deliver up to a peace officer upon the granting of a protection order.⁶⁷ The bill instead only includes firearms, ammunition or specified weapons in the respondent's possession. This change is perhaps a reaction to the restricted circumstances in which possession of explosive substances have been evidenced by subjects in the past.

In relation to s. 7 (1)(g), the bill introduces s. 7.1(1), which requires a protection order to include a direction to deliver up any firearm or ammunition where it is determined that a respondent is in possession of such and directs peace officers to seize these items using reasonable force where necessary.⁶⁸ Prior to this amendment, it was within the justice of the peace's discretion to include a provision for delivering up and seizing firearms.⁶⁹ The amended provision seems to address the practical reality that respondents may be unwilling to deliver up their weapons regardless of the legal sanctions that follow. Section 7.1(2) is ancillary to the latter provision in that it requires that delivery or seizure of the items be dealt with in accordance with the regulations.⁷⁰ Further, the bill amends the act by including s. 11(1) which allows the respondent to apply to the court to have an order made under s. 7(1)(g) and 7.1(1) set aside.⁷¹ This provision addresses the fundamental rights of the respondent considering the ex

⁶⁷ *The Domestic Violence and Stalking Act*, CCSM c D93, s 7(1)(g) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 8.

⁶⁸ *The Domestic Violence and Stalking Act*, CCSM c D93, s 7.1(1) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 9.

⁶⁹ In *Incho v Incho*, 2010 MBQB 90, 2010 CarswellMan 140, this was a term of the protection order granted against the petitioner's husband.

⁷⁰ *The Domestic Violence and Stalking Act*, CCSM c D93, s 7.1(2) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 9.

⁷¹ *The Domestic Violence and Stalking Act*, CCSM c D93, s 11(1) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 10.

parte nature of protection orders. Section 12(1) is amended to reflect the changes made in s. 7 (1)(g).⁷² Section 12(2) determines that the respondent has the onus to demonstrate, on the balance of probabilities that an order made under s. 7 (1)(g) and 7.1(1) should be set aside.⁷³

Similarly, s. 14(1)(h) directs the respondent to deliver up firearms, ammunition and weapons in accordance with a prevention order.⁷⁴ This is a comparable amendment because it removes explosive substances from the list of dangerous items to be forfeited by the respondent.

A final amendment is made to s.27 (e) of the act, which seems to broaden the power of the Lieutenant Governor in Council (LG) with respect to making regulations.⁷⁵ It allows the LG to authorize the court to make orders respecting “the handling, storage, forfeiture or disposition of items delivered up or seized pursuant to a protection or prevention order”.⁷⁶ Since the Provincial Court of Manitoba is now included under the act, it appears that the LG may permit more widespread execution of the act.

V. LEGISLATIVE PROCESS

Bill 11 received Royal Assent on March 15th, 2016.⁷⁷ The effect of the legislative process on the bill was negligible since no amendments were instituted following its introduction. One might have expected amendments to the bill prior to committee approval because of the comments made during the readings of the bill concerning the reacquisition of firearms, GPS monitoring, the enforceability of orders and the costs associated with the bill.⁷⁸ While this was not the case, the questions and debates are worth summarizing as they point out possible

⁷² *The Domestic Violence and Stalking Act*, CCSM c D93, s 12(1), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 11(1).

⁷³ The MB Act, *supra* note 4, s 12(2).

⁷⁴ *Ibid*, s 14(1)(h).

⁷⁵ *The Domestic Violence and Stalking Act*, CCSM c D93, s 27 (e), as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 13.

⁷⁶ The MB Act, *supra* note 4, s 27 (e).

⁷⁷ *Supra* note 3.

⁷⁸ Manitoba, Legislative Assembly, *Hansard*, 40th leg, 5th sess, No 11B (1 December 2015) at 400-412.

deficiencies in the amendments and give proactive insight into how the bill could be successfully implemented.

A. First Reading

On November 30th, 2015, Mr. Mackintosh presented a motion to the Manitoba Legislative Assembly stating that *The Domestic Violence and Stalking Amendment Act* should be read for the first time.⁷⁹ The Minister of Family Services and responsible for the Status of Women seconded the motion.⁸⁰ Mr. Mackintosh indicated that the general purpose of the bill was to “make it easier for victims of intimate partner violence to obtain emergency protection orders and [to] ensure stronger orders including the mandatory surrender of firearms.”⁸¹ Further, he highlighted that this would form “part of a broader strategy for greater safety for Manitoba women and children.”⁸²

B. Second Reading

During the second reading of Bill 11 on December 1st, 2015, Mr. Mackintosh confirmed the more specific purposes of the bill and its development.⁸³ He explained that the amendments were developed through consultation “with community groups, with police, and others”.⁸⁴ He went on to highlight the most important changes to the legislation, which were decided based on the consultation process. First, he stated, “the restructuring of the criteria for granting a protection order based on the seriousness or urgency of the circumstances” was a significant alteration developed by considering specified factors related to the rate of domestic violence or stalking that must now be considered by the justice of the peace when granting a protection order.⁸⁵ Further, he noted the importance of the provision “requiring the other party to surrender their firearms and ammunition”, failing which the legislation provides that police may seize the items and notify the chief firearms officer, which “will

⁷⁹ *Hansard* November, *supra* note 2 at 325 (Hon Gord Mackintosh).

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Hansard* December, *supra* note 41 at 400 (Hon Gord Mackintosh).

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

assist ... in determining whether to grant, revoke or impose conditions on the ... possession and acquisition license for firearms”.⁸⁶ Mr. Mackintosh justified these amendments as he ensured that they “will strengthen the ability of a victim of domestic violence or stalking to seek a protection order without notice against a respondent when necessary”.⁸⁷ Furthermore, he insisted that, despite the fact that the victim’s rights will be strengthened, the rights of the respondent will continue to be upheld and respected by allowing the respondent to request that the order be set aside.⁸⁸ Finally, he argued that “the changes in this bill will significantly improve the operation of Manitoba’s domestic violence and stalking legislation [and] Manitoba will continue to have the broadest civil domestic violence and stalking laws in the country, and those changes will benefit Manitobans for years to come.”⁸⁹

1. Questions

During the question period, the most persistent member was Mr. Kelvin Goertzen, a member of the Progressive Conservative Party. Mr. Goertzen raised issue with the fact that when Bill 11 was announced to the public, it was promised that GPS monitoring of those restricted by a protection or prevention order would be revisited.⁹⁰ Consequently, he expected Mr. Mackintosh to shed some light on that proposition.⁹¹ He questioned what type of GPS monitoring was proposed and how this would form part of the project.⁹² Mr. Mackintosh indicated that a “GPS expansion team”, including the Winnipeg Police Chief Devon Clunis, University of Manitoba Law Professor Karen Busby, the head of Victims Services, an expert in high-risk offender prosecution, and the head of probation in Manitoba was formed and that it would be up to this team to determine the scope of a GPS monitoring system to be used in conjunction with the act.⁹³ Mr. Goertzen was concerned that the government has promised time and time again that monitoring would be

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid* at 401.

⁹⁰ *Ibid* (Kelvin Goertzen).

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid* (Hon Gord Mackintosh).

used in domestic violence cases and that at present, there have been little to no cases where this approach has been employed.⁹⁴ Mr. Mackintosh ensured that the new task force should have a clearer picture of the role that GPS monitoring could play by the spring of 2016.⁹⁵

Mr. Goertzen also expressed concerns with implementation of the changes with respect to possession, delivery, and seizure of firearms.⁹⁶ He questioned how the firearm's department of the RCMP would, in fact, enforce this new scheme.⁹⁷ Mr. Mackintosh explained that the new scheme requires that the chief firearms officer be involved on every file where a firearm has been identified as being in the possession of the respondent, that he may undertake further investigation and revoke or take other action.⁹⁸ In the past, it was within the justice of the peace's discretion whether to have the respondent surrender his or her firearm, however, the bill makes this a mandatory exercise.⁹⁹ Concerning broader enforcement of this aspect of a protection order, Mr. Mackintosh stated that further and enhanced training for the RCMP and Winnipeg Police with respect to domestic violence and the amendments to the legislation would be executed in order to give the officers the tools to ensure that the legislation be effectively carried out.¹⁰⁰ He did not, however, indicate whether there would be the creation of a special unit formed to ensure compliance with the delivery and seizure of firearms from a respondent. A valid concern was raised regarding how the chief firearms officer would address the situation where a respondent's firearms are seized but he or she obtains additional weapons after this seizure.¹⁰¹ It was questioned whether a system would be put in place to monitor those individuals. Mr. Mackintosh avoided this question by answering, "we're going to make sure that they, in fact, have a full tool chest" and that further training regimes

⁹⁴ *Ibid* (Kelvin Goertzen).

⁹⁵ *Ibid* (Hon Gord Mackintosh).

⁹⁶ *Ibid* at 402 (Kelvin Goertzen).

⁹⁷ *Ibid*.

⁹⁸ *Ibid* (Hon Gord Mackintosh).

⁹⁹ *The Domestic Violence and Stalking Act*, CCSM c D93, s 7.1(1) as amended by Bill 11, *The Domestic Violence and Stalking Amendment Act*, s 9.

¹⁰⁰ *Hansard* December, *supra* note 41 at 403-404 (Hon Gord Mackintosh).

¹⁰¹ *Ibid* at 403 (Kelvin Goertzen).

may be needed to address this concern.¹⁰² This was a valid inquiry given that the legislative changes would not be fully effective if they cannot continue to protect victims once the initial removal of firearms from their assailants is executed.

The Honourable Jon Gerrard, member of the Manitoba Liberal Party, was the only other member that probed Mr. Mackintosh, but on an entirely separate issue. His concern was with the estimated cost of the bill.¹⁰³ Mr. Mackintosh replied that, other than the costs associated with prosecuting the breaches of protection orders, which are at the expense of Manitoba Justice, the only major cost would result from the potential GPS monitoring.¹⁰⁴ He was, thus, seemingly unconcerned with the costs associated with the bill, as he assured, “it is an expansion and a strengthening of the existing regime”.¹⁰⁵

2. Debate

During the debate portion of the second reading, Mr. Kelvin Goertzen took a second opportunity to express concern that the government previously promised that GPS monitoring was going to be used in association with domestic violence and that this did not in fact occur. He found it suspicious that the NDP government re-introduced the use of this technology to the public and to the Assembly just prior to the provincial general election of 2016.¹⁰⁶ Accordingly, he seemed skeptical whether the technology would, in fact, be utilized going forward. Mr. Goertzen also highlighted for the second time the importance of putting into place a scheme to continually monitor reacquisition of weapons by the respondents.¹⁰⁷ He was not convinced that the bill addressed this and was concerned that Mr. Mackintosh had not fully considered the issue.

Mr. Gerrard took an alternate position with respect to the GPS monitoring of respondents. He expressed concern about the ex parte nature of protection orders and “putting tracking collars of GPS systems on someone” without appearing in court.¹⁰⁸ He stated further that the

¹⁰² *Ibid* (Hon Gord Mackintosh).

¹⁰³ *Ibid* (Hon Jon Gerrard).

¹⁰⁴ *Ibid* (Hon Gord Mackintosh).

¹⁰⁵ *Ibid*.

¹⁰⁶ *Ibid* at 410 (Kelvin Goertzen).

¹⁰⁷ *Ibid* at 411.

¹⁰⁸ *Ibid* at 406 (Hon Jon Gerrard).

respondent's human rights must be considered in relation to the amendments so as to ensure that the respondent's rights are upheld.¹⁰⁹

Mr. Gerrard also revisited the issue of costs, as he considered that doubling the amount of protection orders granted and putting GPS monitoring in place could result in an increased monetary burden.¹¹⁰ Further, he cautioned that this monetary strain might not result in a decrease in domestic violence and that a provision for ongoing scientific research must be written into the bill to ensure there is a real effect on domestic violence rates.¹¹¹ Finally, he argued that Bill 215, which proposes to provide education on domestic violence in the primary and secondary education system, is a valuable alternative or complement to Bill 11.¹¹²

C. Committee Hearing: The Standing Committee on Justice

On February 18th, 2016, the Manitoba Legislative Standing Committee on Justice considered Bill 11.¹¹³ Two women spoke to the Bill, Professor of Sociology at the University of Manitoba, Dr. Jane Ursel, as well as the director of *A Woman's Place, Norwest Co-op Community Health Centre*, Ms. Kim Storeshaw. Both women were of the opinion that the legislative amendments were necessary and would effectively address issues arising from the current act.¹¹⁴

In 2003, Dr. Ursel conducted research on the application process for protection orders and its consequences. Her research revealed that the justices of the peace were exercising wide discretion in granting protection orders, which resulted in extreme variation for applicants depending on the decision maker.¹¹⁵ Also, since the only mechanism to review decisions was triggered when a decision was overturned or varied by a reviewing court, this created a chilling effect on the decision making process and a substantial decline in protection orders granted.¹¹⁶ Dr. Ursel evaluated Bill 11 and found the new provisions to directly address those issues. She

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid* at 407.

¹¹³ Manitoba, Legislative Assembly, *Standing Committee on Justice*, 40th Leg, 5th Sess, No 1 (18 February 2016) at 28.

¹¹⁴ *Ibid* at 28-31.

¹¹⁵ *Ibid* at 28.

¹¹⁶ *Ibid.*

stated, “I believe that these amendments are crucial in enhancing the security of persons at risk in circumstances of domestic violence and respond effectively to the concerns that I was identifying in my research a number of years ago.”¹¹⁷

Ms. Storeshaw considered the focus on the history of domestic violence under the new legislation to be a welcomed change. Considering her twenty years of experience assisting women in seeking protection orders, she was hopeful that centering on the cycle of violence would restore women’s faith in the justice system and would further protect children in abusive situations.¹¹⁸ Furthermore, having witnessed firsthand the discretionary nature of the current legislation, she argued that the bill would eliminate confusion in decision-making.¹¹⁹ It was encouraging to Ms. Storeshaw that the bill eliminated situations where women would be denied orders based on residing in shelters or their spouse being in prison and that it required the seizure of firearms.¹²⁰ Importantly, she confirmed that while some women who seek protection orders are not eligible, in her experience, it is anomalous for a woman to come forward if she is not in need of protection and that the bill would make protection more accessible to these women.¹²¹ Finally, she confirmed that the bill addressed Internet stalkers adequately, but that further technical support was required from the Winnipeg Police Force to prove Internet stalking.¹²²

D. Third Reading and Concurrence

1. Debate

During the third reading and concurrence of Bill 11 on March 7th, 2016, Mr. Goertzen declared his support for the bill.¹²³ He affirmed that the “issue of the availability of protection orders is critical” and that the bill responded to that issue while also balancing the respondent’s civil rights.¹²⁴ He also raised the important issue of enforceability of protection

¹¹⁷ *Ibid* at 29 (Dr. Jane Ursel).

¹¹⁸ *Ibid* (Kim Storeshaw).

¹¹⁹ *Ibid* at 30–31.

¹²⁰ *Ibid*.

¹²¹ *Ibid*.

¹²² *Ibid* at 32.

¹²³ *Hansard* March, *supra* note 48 at 867 (Kelvin Goertzen).

¹²⁴ *Ibid*.

orders. He highlighted that the bill is lacking in terms of directing enforcement of orders and that it must go further.¹²⁵

On the issue of GPS monitoring, Mr. Goertzen considered that the House had publicly discussed whether this type of surveillance was considered constitutional or not.¹²⁶ He urged that GPS monitoring is an essential tool for combatting domestic violence and this legislation should “push the envelope” to effectively protect victims.¹²⁷ In sum, while Mr. Goertzen extended his commitment to the bill, he stated that the issue of enforcing protection orders required persistent thought, monitoring, and revision beyond the changes that the bill proposed.¹²⁸

Subsequently, Mr. Gerrard provided that, since Manitoba has one of the highest rates of domestic violence in the country, he was satisfied that moving forward with the bill was reasonable and appropriate.¹²⁹ He noted that, considering the research, it was “disturbing to find that there wasn’t consistency among justices...in ensuring that the history of domestic violence was taken into account when a protection order was issued or not issued.”¹³⁰ Therefore, Mr. Gerrard found it encouraging that the bill addressed this risk factor. On the other hand, he was concerned about the general stigmatization of those with mental health issues since mental health was also included as a mandatory consideration under the risk factors.¹³¹ Considering the factors, he stated that ongoing research was important in determining the effectiveness of the act going forward.¹³² He also urged that this research should be used to determine when, where, and to whom protection orders should be granted as well as to help protect both victims and perpetrators.¹³³ He explained:

[T]he better that we can understand the factors which cause the violence, the better that we can look at ways in which we can prevent violence not just through

¹²⁵ *Ibid.*

¹²⁶ *Ibid* at 868.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid* at 874 (Hon Jon Gerrard).

¹³⁰ *Ibid* at 873.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid* at 874.

the justice system, but through the application of the health-care system, better supports in mental health- [and] improved access to psychologists [...].¹³⁴

Mr. Reg Helwer, Progressive Conservative member, also supported the bill during the third and concurrent reading.¹³⁵ While he did raise the recurring issue that the bill needed to address enforceability of protection orders, he described the bill as being a step towards breaking the cycle of violence.¹³⁶ The cycle may begin with economic issues or addictions in a family, he explained, and should be addressed with better resources available for individuals, taking interventionist steps and providing education.¹³⁷

Mr. Shannon Martin, Progressive Conservative member, suggested that putting Bill 11 forward was “a worthy goal”.¹³⁸ He cautioned that while the bill does not guarantee that offenders will abide by protection orders, the provision for the seizure of firearms is a new protective tool for victims.¹³⁹ Furthermore, Mr. Martin emphasized his satisfaction with the definition of domestic violence being expanded to include electronic media forms.¹⁴⁰ Outside of the bill, he urged that resources be available to individuals who leave their abusive spouses in order to help prevent the cycle of violence as well as for perpetrators who want to make changes.¹⁴¹

Mr. Mackintosh closed the debates by revealing that Judge Martin of the Provincial Court of Manitoba had very recently demanded more support for women in the province after hearing five domestic violence homicides against women.¹⁴² While Mr. Mackintosh conceded that the act requires continued improvements, the legislation is, in his opinion, “as strong as it can be with regard to the Constitution.”¹⁴³

¹³⁴ *Ibid.*

¹³⁵ *Ibid* at 875-877 (Reg Helwer).

¹³⁶ *Ibid* at 875.

¹³⁷ *Ibid* at 875-876.

¹³⁸ *Ibid* at 878 (Shannon Martin).

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid* at 879.

¹⁴¹ *Ibid* at 880.

¹⁴² *Ibid* (Hon Gord Mackintosh).

¹⁴³ *Ibid* at 881.

VI. EFFECTS OF THE BILL

A. Short Term Effects

1. Increased Protection for Domestic Violence and Stalking Victims

As previously mentioned, Mr. Mackintosh expects the bill will make it easier for victims to seek protection against their domestic violence offenders and stalkers. He bases this expectation on the new language of s. 6(1), which reduces the requirement to demonstrate imminent and immediate need of protection to showing urgent and serious circumstances. Further, he argues that the mandatory risk factors to consider and the removal of certain bars to granting a protection order will contribute to the increase in orders being granted. If his expectations prove accurate, some may welcome the additional protection orders being granted, while others may be skeptical that the legislation is, in effect, overly broad and results in orders being granted in inappropriate cases. To date, however, it is still uncertain whether, in practice, the amendments will in fact lead to more orders being granted.

Considering Mr. Mackintosh's expectations, the removal of the bars to obtaining an order could arguably lead to more protection orders being granted where appropriate. This is because the respondent being incarcerated has historically prevented subjects from being granted orders against the respondent.¹⁴⁴ On the other hand, it is uncertain how effective the language change in s. 6(1) will be in practice. Considering that the justices of the peace who are granting or denying orders are not changing, it is yet to be seen whether this amendment will change their decision making process. This is especially so considering legal scholar Cheryl Laurie argued, "regardless of the intent of the law, the individuals making the decision have a significant impact on the outcome of cases."¹⁴⁵ Finally, the necessity to take into account certain known risk factors may have the effect of changing the mindset of the justices of the peace when making their determinations, however, it is still within their discretion to reject the application even when the factors are considered. Perhaps the most encouraging amendment is the requirement that decision makers give oral

¹⁴⁴ Hansard December, *supra* note 41 at 404.

¹⁴⁵ Cheryl Laurie, *supra* note 15 at 34.

reasons for their decisions. This requires the justice of the peace to be held accountable for taking into account the risk factors, the severity and urgency of the circumstances, and the removal of the bars to granting the orders. It is less likely that the justices of the peace will be able to curtail the new process because of this amendment but it is the most promising step towards major change.

2. The Justice System

While the bill may not affect the number of protection order applications being filed, if the legislation does what Mr. Mackintosh professes, it will result in more successful applications. An increase in protection orders will likely result in additional breaches of these orders and an increased workload for police officers, Crown Attorneys, and the courts. Additionally, this influx in orders may contribute to backlog in the Provincial Court, the necessity for additional police officers, and overcrowding in Manitoba jails.¹⁴⁶ Furthermore, if additional GPS monitoring of offenders is introduced, fulfilling this promise may require additional personnel to execute the program. Therefore, if the bill provides the result that Mr. Mackintosh expects it to, it begs the question, is our system equipped to deal with it?

3. The Role of the Chief Firearms Officer

Creating a more expansive role for the chief firearms officer will effectively create a twofold effort between the provincial and federal governments to combat the issue of domestic violence and stalking in Manitoba. Currently, the act does not make it mandatory to involve the chief firearms officer and thus, with this amendment, the decision making and administrative power of the chief firearms officer is seemingly strengthened. In addition, since the bill requires that the respondent deliver up his or her firearm(s) to a peace officer, it follows that the chief firearms officer and the provincial police force must work in concert to execute the proposed firearms provisions.

¹⁴⁶ Jacques Marcoux & Caroline Barghout, "Manitoba jails bursting at the seams even though crime rates continue to fall", *CBC news* (29 October 2015), online: <<http://www.cbc.ca/news/canada/manitoba/manitoba-jails-busting-crime-rate-falling-1.3293068>>.

B. Long Term Effects

1. *Firearms Monitoring*

Doubts have been raised with respect to the value of seizing the respondents' weapons when a protection order is first granted. Will this approach effectively protect victims from being injured or killed at the hands of their domestic abusers or stalkers? Mr. Goertzen argued that continuous monitoring would be necessary to ensure that respondents do not simply acquire additional weapons after the fact.¹⁴⁷

To begin, it is encouraging that the bill requires dangerous parties to deliver up their weapons and to notify the chief firearms officer of each protection order involving a firearm. This ensures that the respondent's activity with respect to the legitimate possession of a firearm after the fact will be monitored. On the other hand, the acquisition of non-restricted firearms,¹⁴⁸ or firearms through illegal means or through a third party is an issue that the bill does not seem to address. A more active role for peace officers and the ability to search the respondents for illegal possession on a continuous basis would be required to monitor this activity. The question of whether there are sufficient resources to support this scheme arises. If the existing scheme cannot support this additional undertaking, it may be appropriate to establish a special division or body which would be tasked with carrying out this monitoring. This would create an increased monetary burden.

2. *Privacy Concerns*

The bill does not expressly include provisions considering the use of GPS monitoring for tracking respondents. Mr. Mackintosh did, however, announce to the public when introducing the proposed legislation that using GPS monitoring with respect to offenders would be considered in conjunction with the bill.¹⁴⁹ This announcement posed a concern for certain ministers during the second reading, as set out above.

¹⁴⁷ *Hansard* December, *supra* note 41 at 411 (Kelvin Goertzen).

¹⁴⁸ Bill C-19, *An Act to amend the Criminal Code and the Firearms Act*, 1st Sess, 41st Parl 2012. This bill removed the requirement for registration of non-restricted firearms.

¹⁴⁹ The Canadian Press, "Manitoba beefs up protection orders with firearm ban, GPS

The desire to introduce GPS monitoring in conjunction with the bill, especially in the case of ex parte orders, brings *The Privacy Act* into play.¹⁵⁰ This act prevents violations of privacy, including for example, surveillances, which are substantial, unreasonable, and without claim of right.¹⁵¹ One could argue that pursuant to the current legislation, which requires respondents to apply to set aside ex parte orders, GPS monitoring of said respondents prior to their appearance in court is a substantial and unreasonable violation of privacy. On the other hand, if peace officers are granted the power to carry out this type of monitoring under the Regulation, they will, arguably, be armed with a valid defence pursuant to s.5 (e) of that *The Privacy Act*. Section 5(e) provides a defence against an alleged privacy violation where the act was “that of a peace officer acting in the course of his duties” and “that it was neither disproportionate to the gravity of the subject to investigation nor committed in the course of a trespass; and was within the scope of his duties or within the scope of the investigation, as the case may be, and was reasonably necessary in the public interest”.¹⁵²

At first glance, one can readily acknowledge the public interest in GPS monitoring of respondents given their risk of violence evidenced by the Runke and Keeper tragedies. Conversely, one can imagine circumstances in which malicious orders are granted ex parte and respondents are surveilled unknowingly before they are able to seek that the order be set aside. Therefore, the introduction of this technology into the legislative scheme should be approached cautiously and may be an issue ultimately decided by the judiciary.

In any event, GPS monitoring was not included in the legislation or its regulations.¹⁵³ Therefore, Mr. Goerzten was perhaps correct in his suspicion that the NDP Government primarily made this announcement to obtain favourable votes in the provincial election of 2016.

monitoring” *CTV News Winnipeg* (30 November 2015), online: <<http://winnipeg.ctvnews.ca/manitoba-beefs-up-protection-orders-with-firearm-ban-gps-monitoring-1.2680034>>.

¹⁵⁰ *The Privacy Act*, CCSM c P125.

¹⁵¹ *Ibid*, ss 2(1) and 3.

¹⁵² *Ibid*, s 5(e).

¹⁵³ *Domestic Violence and Stalking Regulation*, Man Reg 117/99.

VII. LOOKING OUTSIDE OF THE BILL

A. Enforcement of Protection Orders

Camille Runke's case highlights an issue with granting protection orders that is not dealt with in the bill or the act. Camille engaged law enforcement 22 times within the year that she was granted a protection order against her husband.¹⁵⁴ These engagements involved her husband who was in breach of the protection order on a number of occasions.¹⁵⁵ It is unclear why her husband was not further monitored or incarcerated after the continued breach of the order to increase the protection of Camille. This case calls into question whether protection orders are being sufficiently enforced, and if so, whether this enforcement is creating enough protection for subjects.

The Department of Justice Canada has stated that spousal abuse policies and legislation reports throughout the country have revealed a significant concern associated with the enforcement of breaches of civil orders.¹⁵⁶ Therefore, it is uncertain whether the granting of additional protection orders will result in victims being increasingly protected against their assailants. It would be encouraging if the bill specifically addressed this issue or if Mr. Mackintosh, in discussions, had highlighted this problem and provided potential solutions. The concern with enforcement of protection orders brings into question the effectiveness and necessity of the act and any amendments thereto.

B. The Necessity of Bill 11

Statistics Canada reveals that over the past 10 years, there has been a decline in self-reported spousal violence. In its most recent General Social Survey on victimization, it indicated that of those "who had a current or former spouse or common law partner, about 4% [...] reported having been physically and/or sexually abused by their partner during the

¹⁵⁴ *Supra* note 39.

¹⁵⁵ *Ibid.*

¹⁵⁶ Canada, The Department of Justice, *Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation*, online: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/pol/spo_e-con_a.pdf> at 54.

preceding five years" as compared with 7% in 2004.¹⁵⁷ In fact, the largest declines were seen in Manitoba, Saskatchewan, BC, and Alberta.¹⁵⁸ Therefore, the bill was introduced at a time when statistically, the situation with respect to domestic violence offences in Manitoba was seemingly improving. This highlights the Legislative Assembly's reaction to certain tragic and highly publicized incidents in which the legislation did not live up to its mandate. While it is difficult to argue that strengthening civil protective legislation is a poor initiative, these statistics indicate that public perception and outcry concerning an issue can fuel the desire for legislative change.

On the other hand, although these statistics reveal a decline in spousal violence, it is uncontroverted that there are many cases of stalking and domestic violence in Manitoba and that, as highlighted above, some result in serious bodily harm and death. It is unclear whether having a protection order in place can effectively prevent a respondent from killing their victim. It seems plausible that those who are intent on killing will not be prevented by a court order even if the bill is passed and the legislation is strengthened. In support of this, Professor Sanjeev Anand argued that "the protective value of court orders – whether in the form of restraining orders, peace bonds, recognizances, or probation orders – may be more illusory than real, at least as far as former intimate stalkers are concerned."¹⁵⁹ Moreover, Dr. Neilson urged that "we know that many, perhaps most, perpetrators of coercive [domestic violence] fail to comply fully with civil restraining and civil protection orders"¹⁶⁰ Dr. Neilson stated that, while protection orders are helpful for "reducing the severity and frequency of abuse and violence", "detering some perpetrators entirely, particularly if intervention is early", "sending a message that the legal system will not tolerate domestic violence [and] encouraging use of safety

¹⁵⁷ Statistics Canada, "Family violence in Canada: A statistical profile" *The Daily* (21 January 2016), online: <<http://www.statcan.gc.ca/daily-quotidien/160121/dq160121b-eng.htm>>.

¹⁵⁸ *Ibid.*

¹⁵⁹ Sanjeev Anand, "Stopping Stalking: A search for Solutions, A Blueprint for Effective Change" (2001) 62 Sask L Rev 397 at 425. Notably, this article dealt with the Criminal Code provisions dealing with stalking [Sanjeev Anand].

¹⁶⁰ Neilson, *supra* note 47 at 8.

planning and enhancing public confidence in the legal system”, they may be ineffectual in other cases.¹⁶¹

It is important to consider what alternative measures could be taken to help prevent the death of individuals when protection orders are simply not sufficient. GPS monitoring of offenders was presented above as an additional measure to simply granting a protection order when the bill was introduced. In addition, Dr. Neilson indicated that “*Criminal Code* options with close supervision are needed in addition to civil protection” in circumstances where respondents disregard the law and have mental health issues.¹⁶² Other alternative measures may include, for example, psychiatric treatment for offenders with mental disabilities¹⁶³ and providing subjects with increased police protection and domestic violence shelters.¹⁶⁴

C. Gun Control

The bill also calls attention to the NDP’s position in favour of a more highly regulated firearms system. First, this is apparent as the bill makes it mandatory for protection and prevention orders to include a direction to deliver up or have weapons seized within the respondent’s possession. Second, it requires that the chief firearms officer be involved with each protection order, thereby further monitoring firearms activity. On a federal level, this bill would be inconsistent with the Conservative government’s stance which was illustrated by the dismantling of the long-

¹⁶¹ *Ibid*; U.S. Department of Justice, Office of Justice Programs, *Stalking and Domestic Violence: The Third Annual Report to Congress under the Violence Against Women Act* (Washington, D.C.: Violence Against Women Grants Office, 1998) reported only 1% of victims found that stalking ceased after the conviction of their stalker under criminal harassment legislation. While outside of the jurisdiction, it is reasonable to conclude there is some correlation in this finding and the circumstances in Manitoba.

¹⁶² Neilson, *supra* note 47 at 10.

¹⁶³ Sanjeev Anand, *supra* note 159 at 424 revealed that treatment programs up to 2001 for offenders convicted under *Criminal Code* harassment provisions did not show noticeable improvements in recidivism rates.

¹⁶⁴ Sanjeev Anand, *ibid* at 425.

gun registry by Stephen Harper's government in 2011.¹⁶⁵ Following twelve years of Conservative Government in Canada, it is open to question whether Prime Minister Justin Trudeau's government will follow in former Liberal leader Jean Chretien's footsteps and Canada will see further gun control throughout the Country. Accordingly, the provisions of Bill 11 could be foreshadowing what is to be expected in terms of gun control on a federal scale.

VIII. CONCLUSION

Bill 11 was introduced when Manitoba was grieving the loss of two women as a result of domestic violence and stalking. The framework set out by *The Domestic Violence and Stalking Act* should have been the mechanism that protected these women from their assailants, and instead, it seemingly failed them. Therefore, Mr. Mackintosh was correct in seeking to amend the act to provide greater access to protection and prevention orders and to strengthen gun control measures to further protect subjects. While these changes are encouraging, concerns have been raised with respect to the continuous monitoring of weapons possession, the costs associated with granting additional protection orders, and the use of GPS monitoring as being an empty promise and a privacy violation. Apart from the substantive aspects of the bill, the enforceability of protection orders was highlighted as an ongoing struggle and alternative measures for addressing domestic violence and stalking were considered necessary. To conclude, the consensus from within the Manitoba Legislative Assembly is that Bill 11 is a welcomed addition in the fight against domestic violence and stalking; however, it is unquestionable that additional statutory protection is on the horizon.

¹⁶⁵ Paul Daly, "Dismantling Regulatory Structures: Canada's Long-Gun Registry as Case Study" (2014) 33:2 NJCL 177.

