



PROTECTION ORDERS IN CIVIL MATTERS

Since January 1, 2016, individuals whose life, health or safety is threatened have had access to a tool to protect them—a tool that is still not well known or understood: the protection order. This tool is even more relevant in the current context where there is a growing social awareness of the impacts of domestic violence. Protection orders are defined in article 509 of the *Code of Civil Procedure*:

509. An injunction is an order of the Superior Court directing a person or, in the case of a legal person, a partnership or an association or another group not endowed with juridical personality, its officers or representatives to refrain from or cease doing something or to perform a specified act.

Such an injunction may direct a natural person to refrain from or cease doing something or to perform a specified act in order to protect another natural person whose life, health or safety is threatened. Such an injunction, called a protection order, may be obtained, in particular, in a context of violence, such as violence based on a concept of honour. A protection order may only be issued for the time and on the conditions determined by the court, without however exceeding three years.

A protection order may also be requested by another person or a body if the threatened person consents to it or, failing that, with the authorization of the court.

A judgment granting an injunction is served on the parties and the other persons identified in the judgment.

At the interlocutory and provisional stages, the following criteria must be met in order to obtain a protection order:

- 1 the appearance of the right to obtain a permanent injunction, or at least—particularly in matters of public law—the seriousness of the issue to be debated on the merits;
- 2 the serious or irreparable nature of the harm that will be suffered if the interlocutory injunction is not issued;
- 3 the balancing of any inconvenience—in terms of both the public interest and the interests of the parties—reveals that the inconvenience resulting from the interlocutory injunction is less than the inconvenience that might result from a refusal to issue the injunction. This is the so-called “balance of convenience” test.¹

A person who is the victim of violent behaviour must satisfy two criteria in order to obtain this injunctive order: that there is an appearance of right—i.e. that the victim is being threatened—and that the harm being suffered is serious or irreparable. The harm in question must not be fleeting or temporary, but must persist over time.²

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.

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¹ Giroux, Pierre, Rochette, Stéphane and Jobidon, Nicholas, “[Les recours judiciaires en droit public](#)” in *École du Barreau du Québec, Droit public et administratif, Collection de droit 2021-2022*, vol. 8, Montreal, Yvon Blais, 2021, 243, p. 268.

² [Condominiums 353 Querbes c. Clément 2022 QCCS 185](#)



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(continued -2-)

Unlike an “ordinary” injunction, a protection order cannot be permanent, and its duration cannot exceed three years.

As with any injunction, where the situation is urgent and the criteria have been met, the protection order can be sought before the application to initiate proceedings is served. In these exceptional cases, the order cannot exceed 10 days.³

The courts recognize that a protection order can be issued in the context of domestic violence for a limited period of time. For example, in a custody and support case, the Superior Court made the following orders:

[TRANSLATION]

[...] the evidence submitted by the plaintiff regarding the defendant’s persistent threatening and controlling conduct and messages, in addition to the Court’s findings as to the defendant’s state during the trial, have convinced the Court that there is a clear right and there is serious harm. Therefore, it is appropriate to make the following protection orders in the context of this family law matter, so as to prohibit the defendant from:

- 74.1. Being within 200 metres of the plaintiff’s home and workplace or the children’s school, except when exercising access rights as provided for in this judgment;
- 74.2. Harassing, annoying or attempting to contact the plaintiff;
- 74.3. Downloading/installing spyware on the electronic devices used by the children in order to geolocate and/or record them and/or access their personal data;
- 74.4. Creating accounts in the children’s names (email, social networks, etc.).

In order to obtain a protection order on the merits of the case for a period not exceeding three years, the applicant must demonstrate a clear right as well as serious or irreparable harm, failing which the protection order will not be made.⁴

The protection order may be sought as part of an application of another type already pending in court. It may be requested in family cases where there is domestic violence.⁵ A protection order has also been successfully obtained, at the request of the Public Curator of Québec, in the context of an application to open a protective supervision regime for a person of full age.⁶ Therefore, a separate application is not required if the protective order applies to the parties to a dispute that is already before the courts.

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³ *Code of Civil Procedure of Québec*, art. 510 para. 2.

⁴ *Droit de la famille – 2147*, 2021 QCCS 166, para. 75.

⁵ *Droit de la famille - 211497*, 2021 QCCS 3275, para. 71.

⁶ *Curateur public du Québec et J.A.*, 2021 QCCS 1645.



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PROTECTION ORDERS IN CIVIL MATTERS (continued -3-)

Moreover, in order to obtain a protection order, there need not be any actual physical violence or actions—threats are sufficient to obtain such an order.⁷

[TRANSLATION]

[38] Since the evidence of the frequent unsolicited visits and the repetitive taking of photographs is uncontradicted, and since these actions have an intimidating effect, creating anxiety and stress that affect the health of Mr. T..., who suffers from insomnia and is a fragile person with suicidal tendencies, the Court is of the opinion that this is all that is needed to find that these actions by Sébastien Gilbert constitute intimidation, even harassment.

In a case involving the Public Curator, the court found that the evidence of the frequent unsolicited visits and the repetitive taking of photographs by the defendant had an intimidating effect on the plaintiff, Mr. T..., a vulnerable person, creating anxiety and stress that affected his health:

[TRANSLATION]

[...] the Court is of the opinion that this is all that is needed to find that these actions by [Mr. X...] constitute intimidation, even harassment.⁸

If you find yourself in a situation in which you feel threatened and you want to know more about your rights, you can call the legal aid office closest to your home to make an appointment, or, if you are in a situation of domestic violence, you can call toll free at 1-833-732-2847 ([Rebâtir](#)).

Don't hesitate to have your eligibility for legal aid evaluated by making an appointment at a legal aid office near you.

To find the contact information for your legal aid office, please visit our website at www.csj.qc.ca.

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⁷ *Y.T. c. Gilbert*, 2019 QCCS 1977, para. 26.

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