

YWCA ACCESS TO JUSTICE
THE ABCs of PROTECTION ORDERS

The Different Kinds of POs

Domestic Violence and Stalking Act
Protection Order
Prevention Order

Criminal Code of Canada
Peace Bonds (s.810)
Terms of Release
(Bail Conditions, Undertakings, Recognizance)

Family Maintenance Act
Prohibition/non-communication Order
Sole Occupation of the Family Home

Protection Orders

Who can apply?

If you are abused or fear you will be abused by a spouse, former spouse, boyfriend, someone you've dated or a family member (whether or not you've lived with them)

DVSA s.2

- persons who are cohabiting or have cohabited in a spousal, conjugal or intimate relationship,
- persons who have or had a family relationship in which they have lived together,
- persons who have or had a family relationship in which they have not lived together,
- persons who have or had a dating relationship, whether or not they have ever lived together, or
- persons who are the biological or adoptive parents of a child, regardless of their marital status or whether they have ever lived together.

Protection Orders

Legal Test (Domestic Violence and Stalking Act):

- * 5(1) A designated justice of the peace may grant a protection order without notice where the justice determines on a balance of probabilities that an order is necessary or advisable for the immediate or imminent protection of the subject, in circumstances where
 - (a) the respondent
 - (i) is stalking or has stalked the subject, or
 - (ii) is subjecting or has subjected him or her to domestic violence;
 - (b) the subject believes that the respondent will continue or resume the domestic violence or stalking; and
 - (c) the subject requires protection because there is a reasonable likelihood that the respondent will continue or resume the domestic violence or stalking.

Protection Orders

What is "domestic violence"?

- * Meaning of "domestic violence"
- * 2(1.1) The following acts and omissions constitute domestic violence:
 - (a) an intentional, reckless or threatened act or omission that causes bodily harm or property damage;
 - (b) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or property damage;
 - (c) conduct that reasonably, in all the circumstances, constitutes psychological or emotional abuse;
 - (d) forced confinement;
 - (e) sexual abuse.
- * Meaning of "stalking"
- * 2(2) Stalking occurs when a person, without lawful excuse or authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, repeatedly engages in conduct that causes the other person reasonable, in all the circumstances, to fear for his or her own safety.
- * Examples of conduct
 - 2(3) The conduct referred to in subsection (2) includes the person
 - (a) following from place to place the other person or anyone known to the other person;
 - (b) communicating directly or indirectly with or contacting the other person or anyone known to the other person;
 - (c) loitering or waiting any place where the other person, or anyone known to the other person, resides, works, carries on business or happens to be; or
 - (d) engaging in threatening conduct directed at the other person or anyone known to the other person.

PROTECTION ORDERS

What can be ordered?

Protection orders may include any of the following provisions necessary for immediate protection:

- prohibit the respondent from coming to the applicant's home or workplace or that of other specified persons
- prohibit the respondent from following the applicant or others
- prohibit the respondent from contacting or communicating with the applicant or others, directly or indirectly
- give the applicant or respondent possession of necessary personal effects
- provide peace officer assistance to remove the respondent from premises and/or to ensure the orderly removal of personal effects
- require the respondent to turn over weapons and authorize the police to search for and seize weapons

After a protection order is made, the respondent will be notified. The respondent will then have 20 days to ask the Court of Queen's Bench to set it aside and will have the opportunity to present evidence.

Credits: Manitoba, Department of Justice, "Family Violence", <http://www.gov.mb.ca/justice/justice/faq/faq.html>

- Victim Services can help women confirm that the abusive man has been "served" [given a copy of] the PO.
- Women should make many copies and keep them with them, give them to their children's school, their work, etc.

What happens after the abuser is served?

- After a protection order is made, the respondent will be notified. The respondent will then have 20 days to ask the Court of Queen's Bench to set it aside and will have the opportunity to present evidence.
- POs can be ordered for a maximum of 3 years

PEACE BONDS

- **§30. (1) An information may be laid before a Justice by or on behalf of any person who fears on reasonable grounds that another person will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property.**
- **(2) A Justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.**
- **(3) The Justice or the summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for his or her fears,**
 - (a) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance, including the conditions set out in subsections (1.1) and (1.2), as the court considers desirable for assuring the good conduct of the defendant; or
 - (b) commit the defendant to prison for a term not exceeding twelve months if he or she fails or refuses to enter into the recognizance.

PEACE BONDS

- A peace bond can:
 - protect the applicant against threats
 - protect property
 - protect pets
 - limit or prevent the other party from contacting the applicant or the children
 - keep the abuser from the applicant's place of work or the children's school
 - keep the abuser's friends or family from calling on his behalf
 - keep the abuser from the applicant's home

Luke's Place 2011

Advantages of a peace bond:

- the details of the peace bond are available to police on the Canadian Police Information Centre (CPIC)
- it is largely an oral process

Disadvantages of a peace bond:

- the process takes a long time and the abuser can cross examine the woman
- the applicant may be asked to enter into a mutual peace bond
- a peace bond is in effect for a maximum of 12 months, at which time a new application must be made, with new evidence to support it
- the process of getting a peace bond can take two to three months
- as with other criminal orders, the abuser must be given the applicant's current address
- it is difficult to change the terms and conditions of a peace bond. All changes must be approved by a judge or justice of the peace.

(As with restraining orders – ultimately a piece of paper. Only as good as the abuser's respect of it, isn't it a guarantee abuser won't breach it.)

Note: Women should be cautious about agreeing to a mutual peace bond since it provides a degree of mutual control of the process and could affect the completion of the mutual proceedings. It is more likely to result in a just peace bond unless the abuser is agreeing to a peace bond.

LUK's Page 2011

How do I get a s.810 Peace Bond

Step #1:

You can go to police but usually if the woman doesn't want her partner charged, she will go directly to the courthouse to a Justice of the Peace

Step #2:

You must provide the JP with evidence, under oath, that you reasonably fear for your or your family's safety

The Crown Attorney can argue against process being issued. Alternatively, the Crown Attorney can intervene on behalf of the complainant and proceed as though a criminal charge was laid.

Evidence for a Peace Bond

- * The JP must believe on a "balance of probabilities" that your fear is reasonable. This means that the JP must find that it is more likely than not that an individual in your same situation would be afraid or threatened. In order to show that you are reasonably afraid, you must have evidence. Personal threats, violence towards you or your family, and damage or threats of damage to your property are considered evidence. It is important to document (write down details about) any harassing or abusive behavior.
- * document every time the individual engages in unwanted or threatening contact with you or members of your family (make sure to keep this record safe)
- * keep any evidence of abuse such as hospital records or photographs
- * keep any records of mistreatment of your children
- * document each time the person has damaged your property or has threatened to damage your property
- * keep a list of witnesses to any harassing behavior such as neighbours or friends. Have these individuals tell their stories to the police
- * save as many gifts, emails, voicemail messages and text messages as possible

Step #3:

If the woman establishes reasonable fear, the JP will issue a Summons for the abusive partner to appear in Court

It can sometimes take weeks before the application for a Peace Bond is heard

Step #4:

The applicant (the woman) and the respondent (the man) will appear together before the JP.

If the man refuses to sign a peace bond, the JP will hold a hearing. The woman will give evidence and may be cross examined by the man.

At this stage the Crown can also argue that the application be withdrawn.

Common Peace Bond conditions

- not contacting you or your children;
- not coming to your home;
- staying away from other places you often go to (place of work, gym);
- not owning any firearms or ammunition.

What are Mutual Peace Bonds?

Sometimes, JPs will issue Mutual Peace Bonds which are orders that place conditions on your behavior, as well as on the behaviour of the person you are seeking protection from. It will often say that neither of you can contact the other person.

It is NOT recommended that women sign mutual peace bonds without speaking with a lawyer first. Some abusers use mutual peace bonds to continue to harass their partners or former partners. For example, an abuser may try to trick a woman into coming into contact with him so that he can call the police and say that she disobeyed the order.

What happens after a Peace Bond has been granted?

If a peace bond has been ordered you should:

- make several copies
- keep one copy with you at all times
- consider giving other copies to your places of employment, your school, and your child's daycare or school

How can I change the terms of a peace bond?

If you need to change the terms of your peace bond, you will need to bring a new action before a JP with new information and evidence outlining the details of your current situation.

What happens if a Peace Bond is breached?

- If a peace bond is breached, contact the police immediately and consider going to a safe place, such as to a women's shelter, or to a friend or family member's home.
- Breaching a peace bond is a criminal offence

Terms of Release – Discussed in Criminal Law overview

Exclusive Possession of Matrimonial Home and other family law orders – discussed in family law overview
