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# Court Orders for Your Protection

## Introduction

The legal system can help to protect you from an abusive partner. There are a number of court orders that can restrict one person's contact with another (some people call these restraining orders). Each kind of order has a different procedure for applying. You can get some types of orders on your own, but for others, you need the help of a lawyer.

Even if you have a court order for your protection, you should still have a protection plan to be sure of your safety and that of your children. This is important because your partner or ex-partner may decide to disobey the order.

Court orders are available through the criminal law system and the family law system.

## Criminal Law Orders for Your Protection

There are four kinds of court orders that may contain conditions for your protection available through the criminal law system:

- Bail Orders (Recognizances or Undertakings)
- Probation Orders
- Peace Bonds
- Non-Communication Orders

## Bail Orders (Recognizances or Undertakings)

If your partner or ex-partner has been arrested and charged with an offence against you, your partner or ex-partner may be released on bail. If your partner or ex-partner is released, the court will likely impose certain conditions. These conditions usually include an order for your partner or ex-partner not to have any contact or communication with you and not to come to where you are living, working, attending school or other places you usually attend.

To make sure that the bail order includes the conditions you need, tell the police officers that arrested your partner or ex-partner what you think your partner or ex-partner might do to harass you. These conditions will stay in place for as long as the court is dealing with the charges, or until the conditions are amended or deleted from the bail order. You cannot apply to have the conditions changed. Only the Crown Attorney or your partner can apply for changes. If your partner or ex-partner disobeys these conditions, tell the police. Your partner or ex-partner can then be re-arrested for breaching (disobeying) the bail order, and will need to apply for bail again. A person who continues to ignore bail conditions may have to stay in custody until his or her charges are dealt with by the criminal courts.

## **Probation Orders**

If your partner or ex-partner has been found guilty of a crime against you, the court may put your partner or ex-partner on probation as part of the sentence. As part of the probation order, the court may impose conditions on your partner or ex-partner's behaviour for a period of time. For example, your partner or ex-partner may have to attend domestic violence counselling, or be ordered not to contact you or come near your home. You cannot apply to have the probation conditions changed. Only the Crown Attorney or your partner can apply for changes. A court can only impose probation conditions for up to three years.

## **Peace Bonds**

A Peace Bond is a court order to protect a person against violent actions by another. It can last for up to one year. You can apply for a Peace Bond against anyone causing you fear—it doesn't have to be your partner or ex-partner. The court will give you a Peace Bond only if it is convinced that you have good reason to be afraid.

To get a Peace Bond, you must apply through the Provincial Court. In Winnipeg, the Provincial Court is downtown at 408 York Avenue. Outside Winnipeg, go to your nearest court office or RCMP Detachment. At the court office, ask to speak to a justice of the peace about a Peace Bond. The justice of the peace will listen to you and write down your reasons for wanting a Peace Bond. You will then be asked to sign a document called an information, which is your sworn statement about why you fear for your safety. This document will set a date for a court hearing. The other person will then be sent a summons to appear in court on that date.

You must be at the court hearing. If you are not there, your application for a Peace Bond will be dismissed. The Peace Bond will be given at the hearing if the other person agrees to it. If the other person does not agree, the court will not issue a Peace Bond. Instead, a trial date will be set, maybe several months later. During this time, you will not have a Peace Bond.

If you appear at the court hearing and the other person does not, the hearing can go ahead and you can get the Peace Bond.

At the trial, you will have to give evidence to convince the judge that you need the Peace Bond. It is important to give examples of things that happened to cause you fear. If you have any witnesses to those things, ask them to testify in court for you. You should also tell the judge if you want certain conditions in the Peace Bond. For example, you may want the person to stay away from your home or place of work.

If the court orders a Peace Bond, you should get a certified copy of it from the court office. This will make it easier to prove to police, if you need to call them, that you do have a Peace Bond against the person. If the person you fear breaches (disobeys) any of the conditions of the Peace Bond, call the police. The person can be charged and punished for breaching the court order. A Peace Bond stays in effect for one year. It cannot be renewed, but you can apply for a new one if you still have reason to fear this person.

## **Non-Communication Orders**

If your partner or ex-partner is denied bail and is ordered to remain in custody until trial, the court may issue an order prohibiting your partner or ex-partner from communicating directly or indirectly with you for the duration of the time your partner or ex-partner is in prison awaiting trial.

## **Family Law Orders for Your Protection**

The Domestic Violence and Stalking Act provides for family court orders to help protect you from someone you lived with (husband, wife or common-law, including same sex, partner). You can also apply for an order if you have never lived with the other person and you had a dating relationship, have a child together or are family members. Orders can also protect you from stalking by someone you don't know. There are two kinds of orders: Protection Orders and Prevention Orders.

Protection and Prevention Orders came into effect in 1999. They replaced orders called prohibition or non-molestation orders. The court no longer makes these orders. However, all existing non-molestation and prohibition orders remain in effect until changed or ended by the court.

## **Protection Orders**

You can get a Protection Order quickly, simply and at no cost by applying to a Justice of the Peace. You can get the order without first having to tell the respondent (the person you need protection from).

To apply for the order, you have to give the Justice of the Peace evidence under oath that the violence or stalking happened, and that you are afraid that it will continue or resume. It's also possible to get a Protection Order 24 hours a day by telephone, but only with the help of a police officer or a lawyer who has your written consent.

After the Protection Order is made, the other party (respondent) has to be served with (given) a copy of the order. If the respondent disagrees with it, the respondent then has 20 days to apply to a judge to end the order. The order will remain in effect until it is overturned, varied or expires.

A Protection Order can protect you in many ways. It can order the respondent to:

- not go to your home, job site, places you usually attend, such as the homes of other people you keep in contact with and places of worship
- not follow you or others
- not contact or communicate with you or others, including any children in your care, directly or indirectly.

***Protection Orders can also:***

- give you or the respondent temporary possession of necessary personal belongings
- provide police help to remove the respondent from your home or to ensure the safe removal of personal belongings
- require the respondent to turn over weapons and authorize the police to search for and seize weapons

***Regarding Attendance at Court Proceedings, Protection Orders can provide that the respondent:***

- remain at least two metres away from you at all times
- not communicate with you except in the presence and with the approval of the judge, master, or other court officer, mediator, assessor, investigator or evaluator; and
- not remain in any location where the respondent would be alone with you.

**Note**, that the presiding judge or master in a court proceeding where the respondent or you are present, may make a different order, restricting the respondent's conduct, as the judge or master considers appropriate.

Protection Orders remain in effect for three years. However, a Justice of the Peace may order that the Protection Order will stay in effect longer, if the Justice of the Peace is satisfied that the person applying for the Protection Order needs a longer time period for protection. The Protection Order will set out an expiry date. If the Protection Order has expired or will expire within the next three months, you can apply for an extension of the order, if you still need protection.

A Woman's Place provides the following services

- legal information, advice and representation
- Legal Aid applications
- assistance in preparing legal documents
- information and assistance with protective orders
- support groups and support counseling
- accompaniment to court or appointments
- counselling for children who have witnessed domestic violence

## **What if I need an order right away?**

If you are in a crisis situation, you can get a court order within a few days. However, there is a special procedure involved.

For most orders, your partner or ex-partner has the right to be notified of the application and to challenge it. If your partner or ex-partner opposes the order, the court will hear from both of you and make a decision. In a crisis situation, the court can hear your case through your lawyer and make a decision without notifying your partner or ex-partner first. If an order is granted, it can give you:

- the right to live in the home or apartment without your partner or ex-partner (also called a sole occupancy order) combined with a Protection Order
- temporary custody of your children (also called interim custody)
- police help for enforcing the order, if necessary
- any of the orders included in a Prevention Order

If the order includes police help, you should get a certified copy of the order from the court or from your lawyer. This certified copy is not necessary to get police help, but it can be very helpful in dealing with the police.

If you need an order to deal with a crisis, you should get the help of a lawyer, because the application requires formal documents and special procedures. A lawyer can also advise you whether the court will consider your situation an emergency. After the crisis has passed, a lawyer can also help you to present your applications to the court to deal with the other issues of your case.