

Protection Orders

There are four forms of Court orders which can protect women experiencing violence:

- (1) Terms of release (recognizance and undertaking, bail conditions etc.) following a violent partner being charged by police
- (2) Restraining Orders (Family Court)
- (3) Peace Bonds (Criminal Court)
- (4) Exclusive Possession of the Matrimonial Home (Family Court)

Differences Between Restraining Order and Peace Bond

	Restraining Orders	Peace Bonds
Available against:	Someone you are or were living with or married to [does not apply to someone you were just dating]	Anyone
Duration:	Temporary (up to several years) or permanent	Max 1 year
Initial Application Process:	Written	In Person
Length of Time Between Application and Issuance:	Several weeks but urgent order could be shorter	Between a few days and several months
Available if Property is at Risk	No	Yes

Restraining order

46. (1) On application, the court may make an interim or final restraining order against a person described in subsection (2) if the applicant has reasonable grounds to fear for his or her own safety or for the safety of any child in his or her lawful custody. 2009, c. 11, s. 35.

(2) A restraining order under subsection (1) may be made against,

(a) a spouse or former spouse of the applicant; or

(b) a person other than a spouse or former spouse of the applicant, if the person is cohabiting with the applicant or has cohabited with the applicant for any period of time. 2009, c. 11, s. 35.

Provisions of order

(3) A restraining order made under subsection (1) shall be in the form prescribed by the rules of court and may contain one or more of the following provisions, as the court considers appropriate:

1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating with the applicant or any child in the applicant's lawful custody.
2. Restraining the respondent from coming within a specified distance of one or more locations.
3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.
4. Any other provision that the court considers appropriate. 2009, c. 11, s. 35.

[And s.40 can restrain spouse from depleting his property to defeat claim for support]

Depending on your circumstances, you may want to ask the court to order one or more of the following terms.

A) **Non-communication with or without exceptions.** The person to be restrained shall not contact or communicate with persons protected by the order. Be sure to include the full legal name of person(s), including any children, to be protected by the order.

- You may also list exceptions to the non-communication order. This will mean that there are situations when communication can occur. Be sure to specify the exceptions. For example, contact or communication does not occur except:
 - Through another person or agency (be sure to insert the name of the agency) to arrange access to the children; and/or
 - To permit access in accordance with the access order (be sure to insert the date of the order); and/or
 - Through or in the presence of a lawyer (be sure to insert whether it is your lawyer, the lawyer for the person restrained or both).

Example:

“I need an order that my spouse JD not contact or communicate with me by telephone between the hours of 7:00 p.m. and 8:00 a.m. Since we have separated JD calls about 4-5 times each night asking me to reconcile and becoming increasingly angry when I will not agree to a meeting. During this time period the children are sleeping and become very scared when the telephone repeatedly wakes them up. The calls also upset and frighten me and leave me less able to respond to the children when they wake up”.

B) Stay away with or without exceptions. The person to be restrained shall not come within a certain distance (in meters, feet or yards) of particular locations [school, work, gym, place of worship, parent's home, daycare]. You may also list conditions under which contact can be made. Be sure to include the specific location and/or address including street number, town/city, and the conditions.

Example:

“I need an order that my spouse JD stay away 500 metres from my children's daycare centre at 123 Main Street, Anytown, Ontario, because in the past few weeks JD has waited outside the centre and then approached me when I returned to my car after dropping off the children. During this contact JD has threatened to kill me if I did not agree to share custody of the children”

C) Other. Specify if there are other terms that you would like the judge to include in the restraining order. These will usually be terms that are specific to your situation.

Types of Restraining Orders

- Urgent Ex Parte Restraining Order with or without notice
- Temporary Restraining Order
- Permanent Restraining Order

How to Apply for a Restraining Order

Ongoing safety planning is important at all stages of this process. See the Resources section of this guide for more information.

Step 1
Find out which court to go to to apply for a restraining order (RO)

Step 2
Decide what you need from the court and if some or all of it is urgent*

*In many cases, only some of what you are asking for will be urgent. In those cases, you may follow the urgent process to obtain a temporary order for those claims only, and any remaining claims will be addressed at a case conference and throughout the remainder of the process.

Urgent
Determine whether or not you are proceeding with or without notice

Not urgent

Without notice

With notice

Steps 3 and 4
Prepare and file application and motion materials

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Prepare and file application

Step 8
Go to hearing of motion

Steps 5 and 6
Arrange service of materials and file proof at family court counter

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Temporary Restraining Order not granted

Step 9
Temporary Restraining Order granted
-Court staff will prepare RO and send to copy to police
-Ask family court staff for a copy of RO

Step 7
File confirmation form to tell the court that you will be in court on the day of the hearing

You can ask staff at the family court office to arrange to have your documents served and file proof of service. This is a free service. If you have a lawyer, your lawyer will do this for you.

Arrange service of application, motion materials and RO on other person

Step 8
Go to hearing of motion

Return to court for further hearing

Step 9
Temporary Order granted/not granted
-If RO granted, ask family court staff for a copy

Step 10
-Proceed with court process to obtain final order. For more detailed information about these steps, please see the Ministry's Guides to Procedure, available online at www.attorneygeneral.jus.gov.on.ca/english/family/

STEPS

- **Step 1:** Find out which court house you should go to, to apply for a restraining order.
- **Step 2:** Decide what decisions you need from the court and if any of them are urgent.
- **Step 3:** Complete the application form to start your case
- **Step 4:** If you need an urgent order, complete and file motion materials with your application.

What counts as urgent?

The *Family Law Rules* do not define the term “urgent”. However, cases that have been decided by the courts have shown that there must be “dire circumstances” before the court will deal with a request for a restraining order on an urgent basis. You must provide clear evidence in your affidavit to show why your situation must be dealt with right away. The judge will decide whether your motion for a restraining order will be dealt with on an urgent basis.

Urgent Motion *Without Notice*

- A motion without notice to the other person may be made for an urgent restraining order if it is not possible to give a copy of the motion documents to the other person. For example, it may not be possible to give the other person notice if:
 - • You do not know where the other person can be found;
 - • There is an immediate danger that your children will be taken out of Ontario or that you or your children will be harmed; or
 - • Providing notice in advance would probably have serious consequences.
- These motions are sometimes referred to as “*ex parte*” motions.
- Making a motion without notice means that the other person will not know that you are asking the court for a restraining order and they will not be in court to tell their side of the story on the motion date. If you bring a motion without notice, the other person will find out about it if a temporary restraining order is granted. The other person must be served with a copy of the order and your motion documents after the order is made. Ask staff at the family court office to arrange to have your documents served. This is a free service. If you have a lawyer, your lawyer will serve the documents for you. If a temporary restraining order is granted, you and the other person will have to come back to Court so the judge can hear both sides of the story.

forms

- The affidavit form is where you tell the court why you have reasonable grounds to fear for your safety and/or for the safety of your children.
- In the affidavit you should set out the information that the judge will need to know about you and the person you are afraid of, including:
 - • The relationship between you and the other person (whether you are married, living together, separated or divorced);
 - • Whether you and the other person have children together and where the children are living;
 - • Any abuse that you and/or the children have experienced; and
 - • Why you are afraid for your safety and/or for the safety of your children.
- Be detailed in your explanation of why you are afraid of this person. If you can, include the following:
 - • Has the person made threats against you and/or the children?
 - • If the person has hurt you and/or the children, explain exactly how it happened;
 - • Are you afraid that the violence will happen again?
 - • Is there a history of violence or abuse?
 - • If there is a history of violence or abuse, is it getting worse?
 - Has the person hurt or threatened others?
 - [Other risk factors eg on Danger Assessment]

You should also explain why you want the judge to include the terms you have included in your notice of motion.

For example, you may have asked the judge to order the other person to stay a certain distance away from specific places. In your affidavit, be sure to include the reasons why you want this person to be kept away from these places. The judge will decide whether or not all the terms that you have requested will be part of the temporary restraining order.

OTHER FORMS TO COMPLETE: (1) CPIC

- Completing a Canadian Police Information Centre Restraining Order Information Form
- Family court staff will ask you to complete a Canadian Police Information Centre (CPIC) Restraining Order Information Form when you apply for a restraining order. If a restraining order is granted, this form is sent to the police, to show that a judge has ordered the restrained person to stay away from you and/or your children. A copy of the restraining order is also sent to the police with the CPIC form.
- This form will ask for information about the person you are seeking the restraining order against, including their name. If the person is commonly known by another name that is not their legal name (i.e. an alias) or is commonly known by a nickname, indicate these other names on the CPIC form. This will help the police know that they have the right person if the person gets arrested.

Other forms to complete: Confirmation Form

Be sure to follow the instruction in the “Note to Person Making the Motion” that appears at the end of the notice of motion. To complete this step you will need Form 14C: Confirmation. This confirms with the court that you will be attending court on the date and time of the hearing. If you do not file the confirmation, the court date may no longer be available for you.

- **Step 5: Be in court on your court date to explain your case.**
- It is important to go to court on your court date. When your application or motion is heard, the judge will consider what you and the other person have written in your court documents and what you are asked to tell the court. The judge will make a decision based on the evidence. You will be called in to the courtroom to speak with the judge.
- If your motion was made without notice to the other person, the judge will have to decide whether to grant a temporary restraining order without hearing from the other person. If an order is granted, the judge will ask you both to come to court so that the other person can tell their side of the story. At that time, the judge will decide whether to continue the order.
- A restraining order made on a motion is usually temporary. The order may expire on a certain date or the order may include a date for the court to review its terms. At that time the judge might decide to continue the temporary order, make it final or let it end.

Step 6: If the judge has made the restraining order, ask family court staff for a copy of the restraining order.

- If the judge grants the restraining order, family court staff will prepare the order for you. They will do so even if you have a lawyer. You should not leave the court house until you receive a copy of the restraining order. Tell the staff at the family court counter that a restraining order was granted and you are waiting for a copy.
- *Court staff will provide two certified copies of the restraining order at the time it is made, free of charge.*

Exclusive Possession of the Matrimonial Home

An Order for Exclusive Possession is only available to women who are married.

The matrimonial home is wherever the family has been living. It can be owned, leased or rented by one or both of the spouses.

Unless there is an order otherwise, the Family Law Act presumes an equal right of possession of both spouses, regardless of ownership.

If a couple is married, the court can grant one spouse exclusive possession of the matrimonial home for a period specified by the court. This means that the other spouse is not allowed to come onto or into that property and that the remaining spouse can change the locks.

Exclusive Possession of Matrimonial Home (Married Couples)

24. (1) Regardless of the ownership of a matrimonial home and its contents, and despite section 19 (spouse's right of possession), the court may on application, by order,

- (a) provide for the delivering up, safekeeping and preservation of the matrimonial home and its contents;
- (b) direct that one spouse be given exclusive possession of the matrimonial home or part of it for the period that the court directs and release other property that is a matrimonial home from the application of this Part;
- (c) direct a spouse to whom exclusive possession of the matrimonial home is given to make periodic payments to the other spouse;
- (d) direct that the contents of the matrimonial home, or any part of them,
 - (i) remain in the home for the use of the spouse given possession, or
 - (ii) be removed from the home for the use of a spouse or child;
- (e) order a spouse to pay for all or part of the repair and maintenance of the matrimonial home and of other liabilities arising in respect of it, or to make periodic payments to the other spouse for those purposes;
- (f) authorize the disposition or encumbrance of a spouse's interest in the matrimonial home, subject to the other spouse's right of exclusive possession as ordered; and [.....]

- (2) The court may, on motion, make a temporary or interim order under clause (1) (a), (b), (c), (d) or (e). R.S.O. 1990, c. F.3, s. 24 (2).
- **Order for exclusive possession: criteria**
- (3) In determining whether to make an order for exclusive possession, the court shall consider,
 - (a) the best interests of the children affected;
 - (b) any existing orders under Part I (Family Property) and any existing support orders;
 - (c) the financial position of both spouses;
 - (d) any written agreement between the parties;
 - (e) the availability of other suitable and affordable accommodation; and
 - (f) any violence committed by a spouse against the other spouse or the children. R.S.O. 1990, c. F.3, s. 24 (3).
- **Best interests of child**
- (4) In determining the best interests of a child, the court shall consider,
 - (a) the possible disruptive effects on the child of a move to other accommodation; and
 - (b) the child's views and preferences, if they can reasonably be ascertained. R.S.O. 1990, c. F.3, s. 24 (4).
- **Offence**
- (5) A person who contravenes an order for exclusive possession is guilty of an offence and upon conviction is liable,
 - (a) in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both; and
 - (b) in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1990, c. F.3, s. 24 (5).

An exclusive possession order does not affect either party's ownership rights to the home. In other words, even if a woman gets such an order, her partner maintains his ownership rights to the house.

Common law couples do not have the right to apply for an order for exclusive possession under s.24 of the Family Law Act.

PEACE BONDS

- **810. (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 (3.1) and (3.2), as the court considers desirable for securing 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

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 a guarantee abuser won't breach it.]

Note: Women should be cautious about agreeing to a mutual peace bond since it presents a picture of mutual ownership of the problem and could affect the perception of her in court proceedings. She may want to consult a lawyer about the possible impact of agreeing to a peace bond.

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