

Partner Abuse: How Can a Restraining Order Help?

The information in this document is legal information and not specific legal advice.

What is a Restraining Order?

- A Restraining Order is an Order from a Family Court that says that a person is not allowed to do certain things. The conditions that are put in place by the Restraining Order limit things an abusive partner can do to help protect you and your children.
 - These limitations would include things such as:
 - Not allowing them to communicate with you and your children (by any means).
 - Not allowing them to be within a certain distance of you, wherever you are.
 - Not allowing them to be within a certain distance of specific places that you frequently visit.
- A Restraining Order can help protect you, or your family, from contact with an abusive partner. This can be a part of a person's safety plan.
- It is against the law for someone to not follow the conditions set in place by a Restraining Order and failure to follow these conditions can lead to a criminal charge.
- A Restraining Order can be placed against
 - an intimate partner,
 - a person that someone lives with who is not their intimate partner, such as family member,
 - Someone cannot apply for a Restraining Order against someone they dated but did not live with or have a child with.

What factors will be considered?

- You need to be able to show that you have **reasonable grounds to fear** for your safety or the safety of your children, either physical or psychological safety.
 - Factors that the judge will consider are
 - Threats the partner has made (recently and in the past),
 - Evidence of past violent incidents,
 - Violence or threats towards the children,
 - Stalking behavior.
- Evidence to show you need a Restraining Order can be
 - Details of your own story,
 - Information about criminal charges against your partner,
 - Hospital or doctor's records showing injuries or violence,
 - Any harassing or threatening text messages,

- Statements from witnesses who have seen the abuse.
- **More details will make your application stronger.** Include everything that can support what you are saying.
- To note
 - Photographs are not always seen as proof, as it is difficult to use them to persuade the Court. Pictures can be included in your evidence, but be prepared for them to not be enough evidence to demonstrate the abuse.

How to apply for a Restraining Order

- Do you need a lawyer?
 - Although it is better to have a lawyer, a person does not need to get a lawyer to get a Restraining Order. A Family Court Support Worker or shelter worker may be able to support you and guide you through the process.
- **Basic Steps:** Asking the Court for a Restraining Order
 - Go to the Courthouse
 - Either one close to where your children live or, if there are no children involved, near the matrimonial home or where you live.
 - Ask to file a Restraining Order on its own, by filing out a “Notice of Motion” and an “Affidavit”.
 - This is different than filing an Application to start a family court case.
 - This is the method used for Urgent and “ex parte” Restraining Order.
 - The **ordinary process** during a court case is the following
 - You file an application,
 - There is a response from other side within 30 days,
 - You have the right to reply within 10 days,
 - Both sides are required to meet for a case conference before the case begins.
- Urgent and “ex parte” Restraining Order
 - **Urgent**
 - Can be applied for
 - If you need help immediately.
 - If it is reasonable for someone to feel their physical or emotional safety is at risk.
 - You have to file a motion before the case conference.
 - No Restraining Order will be granted if the court decides the situation is not “urgent”.
 - **“ex parte”**
 - This Restraining Order is made without the other person involved being notified when you apply.
 - The court will send (serve) the Restraining Order to the other side.

- This is an important way to proceed for those in situations in which telling the other person in advance would most likely place them or their children in danger.
 - In this case, the other person will be able to respond to the Restraining Order after you get it.
 - This type of Restraining Order is temporary and **only in effect for 14 days** (which will be identified on the Restraining Order).
 - After, both sides will go to Court and argue whether the Restraining Order should stay in effect. It will stay in effect unless the Court decides to make an order to change or end it. In cases where the other person does not go to Court, the Restraining Order will stay in effect.

- Going to Court
 - You must go to the Courthouse to ask for an urgent or “ex parte” Restraining Order.
 - If you receive a Restraining Order, and it is only for 14 days, you will need to return to Court on the scheduled hearing date.
 - There will be a Court hearing when the judge will listen to both sides and decide whether the Restraining Order should be kept in place.
 - You can ask the police at the Courthouse to go with them into Court.

- Sharing Documents
 - For an urgent and “ex-parte” Restraining Order, you do not have to tell the other side when you ask for the Order.
 - If you get a Restraining Order, the court sends the Order to the other side.
 - After, it is your responsibility to send or “serve” the documents (evidence) you gave in Court to the other side.
 - The person will need proof that the documents were delivered or sent, this would be the affidavit of service.
 - How to “serve” documents
 - To the partner directly or to their lawyer.
 - Only to their lawyer if it the lawyer consents to serve and to receive the document.
 - Delivery by hand, mail, fax or courier.
 - Your lawyer can “serve” the documents.
 - Professional “process server” can be paid to deliver the documents.
 - If the location of the other person is unknown, the Court should be informed of this in the evidence and the Court should be asked how to serve the other person.
 - If the other person involved wants to stop the Restraining Order in Court, they have the option to file a response. The other person will need to “serve” their response and their evidence to you before everyone goes to Court.

- Keep your Restraining Order with you
 - You can access certified copies of the Restraining Order document from the Court.

- **Copies of the document should be kept with you at all times.** You can also provide copies to your work, school and children’s school or daycare. You can provide copies to any place where you may need help if your partner arrives.
- The Restraining Order will also be filed with the police (Canadian Police Information Centre).
- Safety Planning
 - After you have served the Restraining Order and the documents to your partner you should
 - Remember that the partner will have seen everything in the evidence,
 - Speak to your lawyer if you have safety concerns,
 - Create a safety plan or review the existing safety plan,
 - Ask about safety at the Courthouse,
 - Contact a women’s shelter or community agency for support.

What if my partner does not follow the Restraining Order?

Remember: a Restraining Order cannot protect you from someone who ignores the Order

- If your partner does not follow or “breaches” any part of the Order, it is considered a criminal offence. Either an offence on its own or added to other offences. In this case, you can call the police and they can arrest or charge your partner.
- What can you do if your partner does not follow the Restraining Order
 - Write down the time, the place and the details of every time the Order is not followed.
 - Consider contacting the police.
 - Follow your safety plan.
 - Protect the safety of you and your children. The police might not arrive quickly or they may not arrest or lay charges on your partner.

Peace Bond

Remember: Peace Bonds cannot protect you from someone who ignores the Order

- A Peace Bond is another kind of Court Order that can help keep an abusive person or partner away from you. They are Orders from a criminal Court.
- What is it
 - It is similar to a Restraining Order
 - It puts limits on what a person can do if they are making you feel afraid for your safety and it is a criminal offence to not follow it.
 - It can order limits on anyone

- Does not matter what your relationship with the person is, only that they are making you fear for your safety. This includes
 - Person that you never lived with (ex: person you dated),
 - A family member,
 - Someone known or a stranger.
 - It can be ordered if you are afraid of the safety of
 - Yourself,
 - Your children, your spouse or your partner,
 - Your property.
 - It is ordered by a criminal Court
 - You can apply for a Peace Bond on its own, without any other criminal charge.
 - It can be a part of the Court's Order to deal with another charge.
- When can you get one
 - If you have **reasonable fear** for the safety of yourself, your partner or your property.
 - The Court will need to believe that this fear is reasonable.
 - You will need evidence to show that your fear is reasonable, which could include things such as
 - Showing threats,
 - Police or court records of violence,
 - Proof of unwanted contact.
- **How to get one**
 - You can get a Peace Bond by going to the police or going to a Justice of the Peace at your local Courthouse.
- Limits of a Peace Bond
 - If the person does not follow any part of the Peace Bond, you should
 - Write down the time, the place and the details of every time the Order is not followed.
 - Consider contacting the police.
 - Follow your safety plan.
 - Protect the safety of you and your children. The police might not arrive quickly or they may not arrest or lay charges on your partner.