



Canadian
Resource Centre for
**VICTIMS
OF CRIME**

— Dedicated to Justice —

PARTNER ABUSE: HOW CAN A RESTRAINING ORDER HELP?

PREPARED BY THE CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME

This paper is intended as a general guide for people who may become susceptible to crime or for victims that are already involved in the criminal justice system. Please do not hesitate to contact our office if you require clarification, or for a referral to an agency in your community that may be able to provide services to you.

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What is a Restraining Order?

A restraining order is an order from a family court that prohibits an individual from doing certain things. Each restraining order has conditions and limitations.

Such limitations include:

- Not allowing an individual to communicate with you and your children (by any means)
- Not allowing an individual to be within a certain distance of you, wherever you are
- Not allowing an individual to be within a certain distance of specific places that you frequently visit

A restraining order can be placed against:

- An intimate partner
- A person that someone lives with who is not their intimate partner, such as a family member

A person **cannot** apply for a restraining order against someone they dated but never lived with or did not have children with.

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 as it is against the law for someone to disregard the conditions set in place by a restraining order. Failure to follow these conditions can lead to a criminal charge.

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 – whether it be physical or psychological safety.

Factors that the judge will consider include:

- Threats the partner has made (recently or in the past)
- Evidence of past violent incidents
- Violence or threats towards the children
- Stalking behaviour

Evidence to show you need a restraining order can include:

- 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

To note:

- **More details will make your application stronger.** Include everything that can support what you are saying.
- 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 guide you through the process.

Basic Steps

- Go to the courthouse
 - Choose one close to where your children live.
 - If there are no children involved, choose one near a matrimonial home or close to where you live.
- Ask to file a restraining order on its own by filling out a “Notice of Motion” and an “Affidavit”
 - This is different from applying to start a family court case.
 - This is the method used for urgent and “ex parte” Restraining Orders.
- The **ordinary process** during a court case is the following:
 - You fill out an application;
 - There is a response from the other side within 30 days;
 - You have the right to reply within 10 days; and
 - Both sides are required to meet for a case conference before the case begins.

Urgent & “Ex Parte” Restraining Order

URGENT

- Urgent restraining orders can be applied when:

- You need help immediately.
- You reasonably feel that your 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”

- An “ex parte” restraining order is made without the other person involved being notified when you apply.
- The court will serve the restraining order to the other person.
- This is a useful way to proceed in situations where telling the other person in advance would most likely place the applicant or their children in danger.
- In this case, the other person will be able to respond to the restraining order after they 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 defendant 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 where the judge will listen to both sides and decide whether the restraining order should remain in place.
- You can ask the police at the courthouse for them to accompany you to court.

Sharing Documents

- For an urgent and “ex-parte” restraining order, you do not have to tell the other person when you ask for the order.
- If you get a restraining order, the court sends the order to the defendant.
- After, it is your responsibility to send or “serve” the documents (evidence) you gave in court to the defendant. 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 defendant directly or to their lawyer, but only to their lawyer if the lawyer consents to serve and to receive the document.
 - Delivery by hand, mail, fax, or courier.
 - Your lawyer can “serve” the documents.
 - A professional “process server” can be paid to deliver the documents.
- If the location of the defendant is unknown, the Court should be informed of this in the evidence and the Court should be asked how to serve them.
 - If the defendant wants to stop the restraining order in Court, they have the option to file a response. They will need to “serve” their response and their evidence to you before the case 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 the defendant arrives.
- The restraining order will also be filed with the Canadian Police Information Centre (CPIC).

Safety Planning

- After you have served the restraining order and the documents to the defendant, you should:
 - Remember that they will see everything in 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; and
 - Contact a women’s shelter or community agency for support.

What If They Do Not Follow The Restraining Order?

Remember: a restraining order cannot protect you from someone who ignores the Order.

If the defendant 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 the person.

What You Can Do?

- Write down the time, place, and 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 the defendant.

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.
- 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
 - It does not matter what your relationship with the person is, only that they are making you fear for your safety.
 - This includes:
 - A person that you never lived with (e.g. the person you dated)
 - A family member
 - Someone you know
 - A stranger
- It can be ordered if you are afraid for 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 a Peace Bond:
 - If you have a **reasonable fear** for the safety of yourself, your partner, or your property.
 - The Court believes that this fear is reasonable.
 - You have evidence to show that your fear is reasonable. Evidence may include:
 - Showing threats
 - Police or court records of violence
 - Proof of unwanted contact

How Can I Apply For A Peace Bond?

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 the defendant.