

## Restraining and Protection Orders – General Information

There are many different types of orders that a court can make that tell one person to have no contact with another person. The orders have different names and different processes, but they have the same result –the protection of a person who has been the victim of violence or is afraid for their personal safety.

Restraining and Protection Orders are serious court remedies and should not be applied for in cases where you are simply being bothered by the other person. In those cases, you should think about practical remedies, such as changing your locks, blocking their phone number or e mail address, or changing your phone number or e mail address.

The types of orders are described below.

### Emergency Protection Order (EPO)

- Available when violence or threatening behaviour occurs between family members (related by blood, marriage, adoption or adult interdependent relationship or have a child together).
- There must be a need for immediate protection.
- If the police are investigating a domestic disturbance, the investigating officer can obtain an EPO, even in the middle of the night.
- The application by the police can be made by phone to a Justice of the Peace.
- The police officer gives evidence (hearsay) and the order is granted immediately and faxed to police officer.
- Can be used to remove offender from home, and prevent their return.
- You can also apply yourself for an Emergency Protection Order from the Provincial Court. The application is done without notice to the other party.
- The Emergency Protection Order must be reviewed by a Queen's Bench justice within 9 working days of being granted.
- At that time, the complainant has an opportunity to file an affidavit with their evidence supporting a continuing order
- Respondent may file an affidavit contesting the application
- Justice can replace the Emergency Protection Order with a Queen's Bench Protection Order.
- If an Emergency Protection Order or a Queen's Bench Protection Order is breached, the respondent can be arrested and summonsed to appear before a Provincial Court. If found that they did breach the Order, they can be fined or jailed.

### Queen's Bench Protection Order

- Similar to an emergency protection order. The differences are:
- The application is done on notice to the other party. The notice might be the emergency protection order, or you can apply directly in the Court of Queen's Bench for the Order.
- The situation does not have to be as urgent as for an emergency protection order.
- The Queen's Bench justice can also order monetary compensation if applicant incurred costs as a result of the violence.

**Restraining Order in Family Violence situations** (between spouses or those who have lived together in an interdependent relationship)

- Obtained in the Court of Queen's Bench, often without notice to the other party. A review date is set to give the respondent a chance to dispute the Order.
- There must be violence, threats of violence or other actions that make you afraid for your physical safety.
- Start by filling in a Restraining Order Application form.
- Restraining order should not be used to settle property disputes – if the issue is who is to remain in the home, the proper remedy is an Exclusive Possession Order.
- Restraining order should not be used to settle parenting / custody disputes. If the issue is where the children are to live or whether the other party is to see the children, the proper remedy is to apply for a parenting or custody order.
- There are no filing fees if only relief asked for is a restraining order.
- If done without notice, it can be obtained very quickly (often the same day).
- If the Restraining Order is continued at the review date, it is usually in place for 3 months, but it can be longer, or even permanent, if necessary.
- If a Restraining Order is breached, the respondent is arrested and held until hearing before a Queen's Bench Justice – usually the next morning. If found that they did breach the order, they can be fined or jailed.

**Restraining Orders in other cases** (e.g. between neighbours, coworkers, those in dating relationships, parent and adult child, etc)

- Start by filing a Statement of Claim setting out how the other party has threatened you with violence or assaulted you.
- There is no filing fee, so long as the only relief asked for in the Statement of Claim is a restraining order.
- Then you make a court application for the restraining order on notice to the other party.
- The Restraining Order is usually in place for 3 months, but it can be longer, or even permanent, if necessary.
- If a Restraining Order is breached, the respondent is arrested and held until hearing before a Queen's Bench Justice – usually the next morning. If found that they did breach the order, they can be fined or jailed.

## Exclusive Home Possession Order

- Available to parties who are married and who start an action under the Matrimonial Property Act
- Available to any separating couple using the Family Law Act **if combined with an application for support.**
- Available to parties who were not married if they have started an action to divide up their property.
- It is intended as an interim remedy to resolve disputes about who will remain in the home, and who will leave – not to be used to divide up assets.
- You do not have to show that there has been violence
- The factors considered are – which party will be most inconvenienced by a move, and what is in the best interests of the children.
- Can be done on an ex parte basis or on notice.
- Can apply for exclusive possession of other assets – eg the family vehicle.
- \$200 filing fee applies if an action for division of property has not yet been commenced.

## Peace Bond

- Obtained through the criminal process
- Complaint is made to police, accused is arrested and given appearance notice to appear in court.
- At court, accused is asked if they will agree to a peace bond. If so, the bond is prepared for them to sign, and the matter is ended.
- If they will not sign, the matter is set for trial (several weeks or months later). If, the trial judge finds that the accused has done something to make the complainant reasonably fear for their safety, then a peace bond will be ordered.
- The peace bond does not create a criminal record.
- It is in place for up to a year, has conditions that the person may not contact the complainant, and may have other conditions.
- If breached, the person is charged with breach of a peace bond – which is a criminal offence. The trial may be several weeks or months after the breach.

## Bail conditions / Criminal Orders

- When a person is arrested for crimes such as assault, stalking, mischief, attempted murder, uttering threats, etc, their bail or release conditions usually include a term that they have no contact with the complainant.
- If the person breaches the condition, they can have their bail revoked, and spend the rest of their time awaiting trial in jail.
- When a person is convicted of an offence like those listed above, the sentence often includes a term of probation. The Probation Order often includes conditions, such as “keep the peace and be of good behaviour” and “meet with a probation officer weekly”, but can also include a condition that the person have no contact with the complainant.

## Non- contact orders

- This is a generic term that includes all of the above.

### A Note about Criminal and Civil cases:

When you go to court on a criminal matter, the Crown must prove its case “beyond a reasonable doubt”. That is often described as the judge being 99.99% sure that the accused person is guilty.



When you go to court on a civil matter (Restraining Orders, Protection Orders and Exclusive Home Possession Orders are all civil matters), then you must prove your case “on a balance of probabilities” – often described as the judge being 51% sure – or more sure than not.



If the other party breaches the Order by contacting you, and if the breach will result in a criminal charge, the police have to be sure they can prove their case beyond a reasonable doubt before they will arrest. But if the breach will only result in civil sanctions, the police will arrest if they are sure they can prove their case on a balance of probabilities.

Also, in criminal cases, decisions about the case are made by the Crown counsel, not by the victim. Often, the Crown counsel will make an effort to discuss the matter with the victim before making a decision – but they are not required to do so, and in some cases, may not be able to. Because of this, release conditions may be changed without your knowledge.

For these reasons, it is often recommended that you apply for a civil Restraining Order or Protection Order, even if criminal charges have been laid.

If you are unsure of what type of order is best for you, [talk to a lawyer or family violence professional.](#)