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Criminal and Family Law

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FAMILY LAW FOR WOMEN IN ONTARIO



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Criminal and Family Law

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem" on our website at www.onefamilylaw.ca.

Women in Canada live with violence every day. Violence includes abuse that is physical, sexual, emotional, psychological and financial. Abuse happens because the abuser needs to have power and control over the victim. Abuse is not your fault. You did not cause the abuse.

What kinds of abuse are illegal?

In Canada, many kinds of abuse are crimes. Here are the most common kinds of abuse:

Stalking is when an abuser does things to scare you. Stalking is a crime even if your abuser does not hurt you physically. Stalking is called **criminal harassment** in the Canadian *Criminal Code*. A person may be stalking you if he:

- watches you and follows you;
- sends you gifts you do not want;
- damages your property;

- tries to contact you or contacts you if you do not want him to;
- sends you lots of messages that you do not want by mail, voice mail or email;
- tries to contact you or send you messages through other people;
- threatens you or your family;
- does any of these things on-line.

If you are being stalked, keep a journal of all contacts you have with your stalker. This record will help you convince the police and the court that he should be charged.

Assault is when one person applies force to another person, or attempts or threatens to apply force to another person. Assault is a crime, even if you are not physically hurt. Assault can include:

- verbal threats of violence
- slapping
- shoving
- kicking
- punching
- stabbing

Sexual assault is a sexual act or touch that you do not consent to. In Canada, your husband can be charged if he sexually assaults you. Sexual assault is a crime even if you are not physically hurt. Sexual assault can include:

- an unwanted kiss;
- a sexual touch;
- forced penetration;
- forcing you to do any of these things or other sexual acts by using threats/telling you that something bad will happen to you or someone you care about, if you don't.

If you have been the victim of stalking, assault or sexual assault, you have the right to call the police.

Police forces in Canada will lay charges, after an investigation, if they believe that you have been assaulted by your partner, even if you don't want them to. Women are sometimes charged with assault because their abuser tells the police that he was also assaulted.

It is important to know that emotional abuse is not a crime in Canada.

How the law can help

You have a few choices if you have been stalked, assaulted or sexually assaulted. None of the options are easy, and none is sure to work. Your first thought should be about keeping yourself and your children safe.

You and your children can be in a lot of danger right after you separate. If you are thinking about leaving your abusive spouse or partner, there are steps you can take that may help you stay safe. Here are three ways the law can help you:

1. Get a Family Court Order

If you are being threatened or abused, you can apply to the family court for a **restraining order** or for an order for **exclusive possession** of the family home whether or not criminal charges have been laid.

Restraining orders

You can apply for a restraining order against your abuser. The restraining order can be for your spouse, your common-law partner, your former spouse or partner, or for someone you have lived with, even if you only lived with them for a short time. A restraining order limits what the abuser can do. The order can tell him not to contact you or your family, and not to even try to contact you. It can tell your abuser to stay away from you, and can say how far away he must be at all times.

How long does it take?

It can take months to get a restraining order because there are so many cases at the family court. If the judge believes that you have good reason to be afraid, she will give you a restraining order against your abuser. The order may be for a set period of time, or it may continue indefinitely depending on the circumstances.

What to do in an emergency

If you or your children are at very high risk of being hurt in the immediate future, you can apply for an order on an *ex parte* basis. This means that you are asking the judge to give you a restraining order without hearing what your partner has to say. It is difficult to get this kind of order and it will usually only be effective for a short time.

What happens if your abuser does not obey the order?

If your abuser violates the terms of the restraining order and you want him to be charged, you must report him to the police. They will investigate your complaint.

An abuser who violates a restraining order can be charged with a criminal offence. This means that he can be arrested, charged by the police and held for bail. If he is found guilty, he may go to jail or be put on probation. For more information about your abuser being held for bail, see below.

Exclusive possession of the family home

If you and your partner are married, you can also apply to the family court for an order giving you **exclusive possession** of the matrimonial home. This means that your spouse cannot come on to the property whether you own or rent it and that you can change the locks. If you are a tenant, speak with your landlord before you change the locks.

If you are in a common law relationship, it is more difficult to get an order for exclusive possession. Get legal advice right away. Find out if you can ask for an order of exclusive possession.

An order for exclusive possession does not affect either person's property rights – even if your partner is not allowed into the house, he can still claim a share of its value.

2. Know your abuser's Terms of Release

If your abuser is charged with stalking, assault or sexual assault, he may be released by the police or he may be held for a bail hearing. At this hearing, the court will decide if he should be held in jail until his trial or allowed out. If he is allowed out of jail, the court has granted **bail**.

Most abusers who are granted bail must follow strict conditions. These are called **terms of release**, or bail conditions. If the abuser is released by the police there will likely also be terms of release. Terms of release almost always say that an abuser must stay away from his victim. Often the terms of release also say that the abuser:

- must be home by a certain time;
- is not allowed to consume alcohol or drugs;
- is not allowed to own or have firearms;
- must live in a certain place;
- must report regularly to the police;
- may have access to the children only through a court order.

How long do the terms of release last?

In most cases, the court will not remove the terms of release until the trial is over and all charges have been dealt with. Sometimes, courts will change the terms before the trial is over. If one of the terms of release is that your abuser must stay away from you, the court will not change that term without getting your permission.

What if the terms of release conflict with an order from family court?

A family court order may say that your abuser has the right to spend time with his children, but if he is charged with assaulting you, his terms of release could say that he must stay away from you and the children. When this happens, it can be very hard to know what to do. **Get legal advice** as soon as possible. Tell the judge and Crown Attorney dealing with the assault charge about the orders from family court.

Who will watch the abuser?

The court may also decide that someone must watch what the abuser is doing. This person is called a **surety**. The surety may have to pay a cash deposit before the abuser is released. The surety must tell the police if the abuser violates his terms of release. If your abuser violates the terms of his release, you should report this to the police, not the surety.

What happens if your abuser does not obey?

If an accused person does not follow any of his terms of release, he may be charged with a new criminal offence. The new charge will be added to the charges from the original crime.

If the accused person keeps breaking the terms of release, the court can decide that his bail should be taken away. In this case, he will be kept in jail until the trial. The court could also keep him in jail if he does something that shows he may be planning to hurt you, like buying a gun.

3. Get a Peace Bond

If you have been threatened or assaulted, you may be able to get a **peace bond**. You can also apply for a peace bond if your abuser threatens or attacks anything that belongs to you. A peace bond may say that your abuser must stay away from you, your family and your property for up to a year. A peace bond is not a criminal charge, but disobeying a peace bond is a crime.

When to use a peace bond

A peace bond is a good idea if you do not want to involve the police, or if you have told the police about the abuse and they did not lay a charge.

How to get a peace bond?

To get a peace bond, you have to talk to a **Justice of the Peace (JP)**. You will have to swear to tell the truth, and then tell the JP why you are afraid of your abuser. The JP will tell your abuser that you have asked for a hearing to get a peace bond. Your abuser can go to the hearing and give evidence. The JP will listen to both of you and then decide what to do. Here is what can happen:

- If the JP believes that you have good reason to be afraid, she will order your abuser to sign a peace bond. The peace bond will say that your abuser must stay away from you, your family and your property for up to a year.
- If the JP cannot tell who to believe, or if she believes that both of you are responsible for the situation, she may dismiss your application. Or, the JP can order a mutual peace bond. This means that both of you must stay away from each other. You must sign the bond saying that you promise to follow what it says.

Talk to a lawyer before you agree to a mutual peace bond. Some abusive men use mutual peace bonds as a way to keep controlling and harassing a woman. For example, he may try to trick you into getting too close to him, so that he can call the police and have you charged with disobeying the order.

You can ask the JP to add conditions to the peace bond. For example, you can ask for the peace bond to say that your abuser must not go near your workplace.

Once you have a peace bond, file it with the **CPIC (Canadian Police Information Centre)**. The police are supposed to check CPIC every time they respond to a domestic call.

What happens if your abuser does not obey?

If your abuser disobeys the peace bond, call the police. Tell them you are calling to report a **breach of a peace bond**. They will not charge him with breach of the peace bond unless they have a record of it. This is why it is important to file the peace bond with CPIC. It's also helpful to always have a copy of the peace bond with you, to show to the police if you need to.

If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law topics available in English*

1. Alternative Dispute Resolution and Family Law (ENG 001)
2. Child Protection and Family Law (ENG 002)
3. Child Support (ENG 003)
- 4. Criminal and Family Law (ENG 004)**
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)
12. Spousal Support (ENG 012)

** This booklet is available in multiple formats and languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*



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