**Protection Orders**

If someone threatens, assaults or harasses you and you feel that you need protection from the legal system, you may have the following choices depending on your situation:

* Apply for a peace bond or restraining order against a person who has threatened to hurt you or your children, to damage your property, or has been harassing you, or
* File criminal charges against a person who has hurt, threatened or harassed you.

**Discuss with Police**

The first step is usually to discuss concerns about your safety with the police. Often, when you fear for yourself or your family’s safety, the other person may have committed a criminal offence by threatening, harassing or assaulting you. Keep in mind, however, that if the police believe that a crime has been committed and that there is sufficient evidence to proceed with charges, they do not always need your cooperation in order to proceed. If a criminal charge were brought against a person (the accused), there may be conditions imposed on the accused similar to those of a peace bond (i.e., that the accused have no contact with you, etc.) by way of Release Conditions or an Undertaking. Release conditions will continue until the matter is dealt with by the Court, by way of a guilty plea or a trial. The conditions can sometimes be changed, but the changes have to be approved by the Court.

You can go to the police station, speak to an officer on duty, and file a police report or make a statement with your allegations. Make a note of the police officer's name and number and, if possible, the police report number for future reference. If they believe it warrants it, the police officer will investigate your case and they should report the results to you. If the officer thinks that the person should be charged, they will write a report to the prosecutor (also called “Crown Counsel” or “Crown Attorney”) with the suggested charges. However, if the officer thinks the person should not be charged, they will tell you so. Follow up your report by contacting the officer who took the complaint if you have not heard anything after a week or so. You have the right to know about the case that concerns you.

Prosecutors are lawyers employed by the government to prosecute, or present, criminal cases in court. A prosecutor will review the police report and may charge the person with an offence. You may have to testify as a witness (tell the court what you know) if the case goes to court. If you suffered financial loss, you may be able to get compensation, so you should give this information to the police or prosecutor. If you don’t hear whether the person has been charged, you should contact the police officer who took the report.

The police may decide not to lay a criminal charge against the other person or the prosecutor may decide not to proceed because there is not enough evidence. There are other options available to you. You may also wish to apply for a peace bond or restraining order without talking to the police or in addition to conditions of release as these will eventually expire.

**Peace Bonds**

A peace bond is a court order designed to prevent personal injury or property damage. It is a protection order under the [*Criminal Code*](http://laws.justice.gc.ca/en/ShowTdm/cs/C-46) of Canada and its formal legal name is an “810 recognizance”. You can get a peace bond if you are afraid that another person will harm you, your partner (spouse or your common-law), your child, or damage your property. The other person could be anyone - a neighbour, an acquaintance or a family member. The peace bond is an order from the court, or an agreement that a person makes with the court, “to keep the peace and be of good behaviour”. You can also ask that the peace bond set out other specific conditions. To give a few examples, the defendant may agree or the court can order the defendant to:

* not visit you at home or at work;
* not call you on the phone;
* not write you letters or send you messages;
* not contact children, parents or other family members;
* not drive by your house;
* be prohibited from possessing firearms or ammunition.

You can apply for a peace bond on your own and don’t need a lawyer although it’s generally a good idea to seek legal advice so that you know what other options are available to you. You can go to the Court House and tell the Court Office staff that you want to apply for a peace bond. They will give you a form to fill out, called an “information”, and you can meet with a Justice of the Peace on Mondays and Thursdays between 9am and 10am (in Brockville).

When filling out the application, you are the “informant”. This means that you are applying for a peace bond, whether for yourself or on behalf of someone else. If you do not want the person against whom you are making this application to know where you are located, then you can use a friend’s or relative’s address. Be sure to get their permission first, and be sure the court can contact you at that address. If you are applying on behalf of someone else, the person on behalf of whom you’re applying is the complainant. The person who you say threatened or harmed you is called the defendant. It is important that you provide as much identifying information as possible about the defendant, including any aliases they may use. A Justice of the Peace will review your allegations as set out in the attached document. The Justice will determine if there are sufficient reasons to order the person that you fear to attend court for a hearing to decide whether or not an order to keep the peace (peace bond) will be issued. A Justice of the Peace cannot order a peace bond automatically or instantly.

The purpose of meeting with the Justice of the Peace is so that you can provide enough information to satisfy the Justice of the Peace that there are *reasonable grounds* for you to be afraid of the person you are concerned about. Bring all documents, including police reports and any *evidence* to support your claim. You may want to bring a support person with you to the meeting. It is a good idea to prepare for this meeting. Evidence could include:

* A diary including descriptions, each date and time that the person has stalked, harassed, followed you, called you names or threatened you, has damaged or threatened to damage your property (with photographs of the damage, if you have any).
* Hospital, medical records and/or any photographs if an assault has occurred.
* Emails, text messages, voice messages, letters, broken items or clothing, injuries, etc.
* The following types of events should be noted: driving by your house several times an hour; sitting in a car watching you or your home; calling you several times an hour/day; hanging up every time you answer the phone.

The Justice of the Peace should explain the process to you and what you will need to do next. If the Justice of the Peace determines you have provided insufficient reasons to order the person you fear to court, the Justice of the Peace will not receive your information. The Justice of the Peace is not required to bring a person to court if he/she is not satisfied the allegations support court intervention. If the Justice of the Peace determines you have provided sufficient reasons to order the person you fear to court, a summons or, more rarely, an arrest warrant, will issue commanding the person you fear to attend court. If the Justice of the Peace believes, on reasonable grounds, that an order should be made, terms of the order will be decided. The defendant will then be asked to enter into the bond. If he/she agrees, the peace bond will be ordered and a court officer will prepare one. Normally, both you and the defendant will be given a copy of the peace bond before you leave the court building.

If the other person does not agree to enter into a peace bond, the matter will be scheduled for a hearing, like a trial. If you are in immediate danger, you can request that the Judge or Justice of the Peace order temporary terms. If the situation is urgent, the Justice of the Peace may be able to issue a warrant so the police can arrest the person. If the police arrest the person, the Justice of the Peace can order the person released – if they promise not to contact you or go to your home or work before the hearing. It may take a few weeks for the matter to be scheduled for a hearing, or it could be scheduled right away. You will be advised by the Justice of the Peace and provided with a notice by the Clerk of the Court of the date, time and courtroom you are required to attend at the hearing. You have the responsibility to ensure your witnesses are in attendance at the time and place scheduled for the hearing or any subsequent date the hearing may be adjourned to. You don’t need a lawyer at the hearing and can represent yourself. The other party will also receive a summons to the hearing and must appear in court on the set date. If the defendant does not show up, the Justice of the Peace can issue a warrant for his or her arrest.

During the hearing, you must show that you have a reasonable fear the defendant will harm you or your family, or will damage your property. You will give evidence under oath describing why you are in need of the Peace Bond. You cannot make emotional pleas without evidence; therefore, you should:

* document every time the person stalked you or threatened you;
* keep any evidence of abuse such as hospital records, photographs, emails, text messages, voice mail messages, etc.;
* in the case of a partner/ex-partner, if applicable, evidence of his mistreatment of your children; and
* document every time the person damaged your property or threatened to;
* take photographs, if possible.

During the hearing, the Justice of the Peace will ask you to explain the reasons why you are requesting the peace bond, under oath. You will have an opportunity to present your evidence in front of the Justice of the Peace, court room staff, the defendant, and anyone else who is present in the court. You should prepare what you are going to say and be aware that the defendant will have an opportunity to cross-examine your testimony and to give evidence under oath. The defendant will explain why he or she does not agree with your reasons for feeling fearful. You may both call witnesses and they will probably need to leave the room while the evidence is being presented. The Justice of the Peace will hear both sides, one at a time, and then decide on ordering the peace bond. If the Justice of the Peace orders a Peace Bond, a court officer will prepare one. Normally, both you and the defendant will be given a copy of the peace bond before you leave the court building. If the defendant still refuses to sign it, they can face up to twelve months imprisonment.

Sometimes, the person you are trying to protect yourself against will tell the court that they need to be protected from you. Or, they will refuse to sign the peace bond unless you do so as well. In such cases, the justice of the peace or judge may issue a mutual peace bond requiring that you stay away from the person as well. This suggests that you have done something to provoke the harassment, which is not often the case. If possible, you should avoid singing a mutual peace bond. Also, the person may try to set you up to break the mutual peace bond. It is strongly recommended that you speak to a lawyer before signing anything like a peace bond.

If the Justice of the Peace issues a peace bond, you should receive two copies before you leave the court house. Make as many copies of it as you need (to carry with you, to keep at home, and to give to your workplace, children’s school, daycare, after-school activities, etc) and keep it with you at all times. If the person disobeys the peace bond, you can call the police immediately. The police may be able to arrest the person and charge them with a criminal offense. That could lead to a fine and up to 6 months in jail. If the peace bond includes your children, give a copy to the principal at their school or daycare, and to sports coaches and recreation instructors, etc.

Generally, the police can enforce peace bonds anywhere in Canada. However, if you move or leave the province, you should carefully review the conditions of your peace bond. For example, the peace bond may restrict the defendant from coming within a certain distance of your home at a specific address. If you move to a new address, you may not have continued protection. If you are uncertain whether your peace bond will apply in your new location, consult your local police or the RCMP. The police and RCMP can only enforce the terms of a peace bond as written. If necessary, you may have to ask for a modification of the peace bond, which could involve another hearing.

A weakness of the peace bond process is that it can take a few months from your initial contact with the court services staff until the peace bond is in place. The length of time depends on whether the defendant agrees to sign the peace bond or whether there will be Hearing. How soon the hearing happens depends on the court schedule in your area. If you are in immediate danger, temporary terms can be made until the hearing. In addition, peace bonds can only last for up to twelve months and they are not renewable. If you need another one, you must make a new application.

**Restraining Orders**

The purpose of a restraining order is to prevent a person from molesting, annoying, harassing or communicating with the Applicant or Respondent of a family law matter, with one’s spouse or former spouse or the children. The term “spouse” includes a same-sex partner or a common-law partner. The law has changed to include a former boyfriend or former girlfriend if they were living together. While peace bonds may be available to anyone through the criminal court, restraining orders are issued through the family court system and are therefore only available to people who have lived together as a couple and any children involved.

You do not need to show fear of harm to get a restraining order. Although you may request one because you are fearful after separating from a spouse, you can also use a restraining order to stop the other person from continuously annoying you, for example, by calling you repeatedly.

A restraining order is an order made by a family court which orders a person or persons to stay away from you. The order can include special terms that state how far away the person must stay from you and identify specific locations where the person must not attend or try to contact you, for example, your home or workplace. The order can also be extended to cover any children in your care. The order can also specify that a person is not to contact another person by any means. If a person breaks a restraining order, they can be arrested and charged.

To apply for a restraining order, it is highly recommended that you speak with a lawyer. Advice lawyers are available during certain times at the court house if you do not have a lawyer of your own. Information about how to apply for a restraining order by yourself is also available on the website for the Ministry of the Attorney General and at the court house. If you have not already started a case in the family court, you will need to file an application. This form starts the court process. The application form sets out all of the issues that you are asking the court to deal with. In family court, you are called the applicant and the person against whom the order is being sought is called the respondent. Your case may involve only a restraining order. Or it could involve a restraining order and something else, such as custody or child support. Once you file an application there are certain steps in the court process that you and the other person must follow. Normally, it will be a few weeks before you see a judge for the next step in your case. In most cases, you will be required to go to a case conference before you can ask the court for an order.

The information that you write on the application form tells the judge what you are asking for. On the last page of the application form, you will need to show why the judge should include each term you have requested in the restraining order. For example, you may have asked the judge to order the other person to stay a certain distance away from specific places. Be sure to include the reasons why you want this person kept away from these places. Or, you could ask that the other person not call you between certain hours and explain why. The judge will decide whether or not all the terms that you have requested will be part of the restraining order.

When you have completed the application, take it to the family court counter to be signed and dated by the clerk. Depending on the court you are in, court staff will provide you with a first court date.

Be sure to follow the instructions that appear on the application form. For more information about starting an application, refer to the Guides to Procedures available at the family court office or on the Ministry of the Attorney General’s website at http://www.attorneygeneral.jus.gov.on.ca/english/family/guides-to-procedures. When you file an application for a restraining order, family court staff will ask you to complete a Canadian Police Information Centre (CPIC) Restraining Order Information. 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.

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?

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. Keep in mind that the person you are seeking the restraining order against will read your affidavit.

You must swear or affirm that the affidavit is true in front of a person who is a commissioner for taking affidavits. If you need help finding a commissioner for taking affidavits, staff at the family court house may be able to help.

Try to include only facts that you know from your own experience. If you need to include information given by a friend, family member or someone else, you should name the person who gave you the information and state that you believe it to be true. Here is an example:

The responding party’s employer, John Doe, told me that the responding party started work at ABC Ltd. in November 2008. I believe this information to be true. Remember, it is a criminal offence to swear a false or misleading affidavit. It is your responsibility to make sure that the information in your affidavit is correct.

In a non-emergency situation, notice of the application for a restraining order must be given to the respondent. That person can then attend the application and speak about the order being granted or not from their perspective.

If, however, your situation is urgent you can bring a motion to get a restraining order right away. A motion is a step in a case where you ask a judge to decide issues on a temporary basis. For example you may be seeking child support or custody but also need a restraining order right away.

Urgent Motion With Notice

If you are asking the court to make a restraining order right away, you are asking the court to consider your request for a restraining order before you take the next step in your case. In your motion materials you will need to tell the judge what the urgency or hardship is (that is, the reason that you cannot wait several weeks to get the restraining order). The motion materials must be served (given) to the other person so that they are aware that you are bringing a motion. 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.

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. If an order is granted on an ex parte application, the court will give a future date when the order will be reviewed by the court so that the person who is named in the restraining order can be present if they wish. In the meantime, the order will be effective as long as a copy of the order is served on the respondent. On the date for review the abuser may attend at court to state any reasons why the order should not be granted. If he or she is unsuccessful or does not attend court, the order will be made for a fixed period of time.

The judge may decide that the situation was not urgent and could order you to pay the “costs” of the other person. “Costs” may include the costs involved with the case, including legal fees. If you do not have a lawyer, you can ask to speak to the advice lawyer at the family court house to discuss whether the situation is urgent. If you are applying for a restraining order without the help of a lawyer, the Guides to Procedure will tell you what forms you need to file, including if you are filing a motion with or without notice.

When the other person is served with an application, they may set out their response to the application and file it with the court. In an answer, the other person can also ask the judge to make other orders in the case. The other person must serve you or your lawyer with a copy of their answer. If there is a “first court date” on the application or on the hearing date set out on a notice of motion, the judge will expect you and the other person to be in court on that date. The date and time for your court date is set by the court. If there is no first court date on the application, you or the other person must ask staff at the family court office for a case conference date. Ask your lawyer, the advice lawyer at the Family Law Information Centre or family court office staff about when a case conference, or an uncontested trial if no answer is filed, can be scheduled. If the other person is served with a copy of a temporary restraining order and motion documents filed on a motion without notice, the judge will expect you and the other person to be in court on the court date set out in the order. You will need to file the “confirmation” form to say that you will be in court on the date of the hearing. If you do not file the confirmation, the court date may no longer be available for you. 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 the judge orders the restraining order, it is important to carry a copy with you at all times and to keep one at home, at work, at your children’s school, daycare and after-school activities and anywhere else named in the order. If a person breaches the terms of a restraining order, the person can be arrested. If you carry a copy of the order you will be able to show it to any authority, such as the police, who can then take the necessary action in arresting the offender.

**References**

Ontario Ministry of the Attorney General. http://www.attorneygeneral.jus.gov.on.ca.

Canadian Resource Centre for Victims of Crime. http://www.crcvc.ca.

Canadian Bar Association. http://www.cba.org.