



**flew** Family Law  
Education for Women  
Women's Right to Know

**fodf** Femmes ontariennes et  
droit de la famille  
Le droit de la femme à savoir

## ***Partner Abuse: How Can a Restraining Order Help?***

*April 30, 2019*

**Tamar Witelson, Legal Director, METRAC**  
**Malerie Rose, Lawyer, Rose Family Law**

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[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

# ***METRAC***

## **METRAC, the Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

[www.metrac.org](http://www.metrac.org)

## **METRAC's Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

## **FLEW, Family Law Education for Women in Ontario**

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

[www.undroitdefamille.ca](http://www.undroitdefamille.ca)

# Presenters

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# *Topics to be Covered*

1. Introduction
2. What is a Restraining Order?
3. What Factors Will be Considered?
4. How to Apply for a Restraining Order
5. What if My Partner Does Not Follow the Restraining Order?
6. What's a Peace Bond?
7. Additional Resources

*Information is accurate as of April 30, 2019.*



# *Introduction*

# *The Importance of Feeling Safe*

- An abusive partner can put your physical safety and your feelings of safety at risk
- Abuse can be:
  - physical
  - sexual
  - emotional
  - psychological
  - financial

# *Who is at Risk*

- Abuse between intimate partners can happen in any relationship
  - married
  - living together
  - dating
- The risk of abuse increases at the time that partners are separating
  - abuse can get worse
  - risk of life-threatening violence increases

# *Developing a Safety Plan*

- If you are being abused or you fear for your safety, it is important to have a safety plan:  
[www.attorneygeneral.jus.gov.on.ca/english/family/violence.php](http://www.attorneygeneral.jus.gov.on.ca/english/family/violence.php)
- A Restraining Order can be part of your safety plan
- A Restraining Order can help protect you and your family from contact with an abusive partner



# *What is a Restraining Order?*

# *What is a Restraining Order?*

- An Order from a Family Court that says that a person is not allowed to do certain things
- The conditions limit things an abusive partner can do to help protect you and your children
- It is against the law to not follow a Restraining Order and can lead to a criminal charge
- In Ontario, a Restraining Order can be made under the *Family Law Act* and the *Children's Law Reform Act*

# *What is a Restraining Order?*

A Restraining Order can put specific limits on your partner's behaviour, such as:

- Not allowed to communicate with you and your children
  - in person, by phone, email, text, social media, or by messages through other people
- Not allowed to come within a certain distance of you, wherever you are
- Not allowed to come within a certain distance of specific places, such as
  - your home, place of work, your children's school or daycare, your place of worship, other places you often go

# *Who Can Apply?*

- You can apply for a Restraining Order at a Family Court if you have a **reasonable fear** for:
  - your safety
  - the safety of a child in your custody
- You do not have to be in physical danger

# *Who Can Apply?*

You can apply for a Restraining Order against:

a) your intimate partner, if:

- you and your partner are or were married
- you and your partner are or were living together at any point, for any amount of time
- you and the other person have a child together
- the partners are any sex, and any gender

b) a person you live with who is not your intimate partner, such as a family member

# *Who Can Apply?*

- You **cannot** apply for a Restraining Order against someone you dated but did not live with or have a child with
- In these cases, you can consider a Peace Bond (discussed later)

# *How to Get a Restraining Order*

Ordinary process during a Court case:

- you file an application
- response from other side within 30 days
- you have right to reply within 10 days
- both sides are required to meet for a case conference before the case begins

# *How to Get a Restraining Order*

## Getting an **urgent** and “*ex parte*” Restraining Order

### a) **Urgent**

- if you need **help immediately**
- if it is reasonable to feel your physical or emotional safety is at risk
  - includes risk of child abduction
  - includes an extremely serious financial situation
- you file a motion **before** a case conference
- if the Court decides the situation is not “urgent”, it will not grant a Restraining Order

# *How to Get a Restraining Order*

## Getting an **urgent and “*ex parte*”** Restraining Order

### **b) “*ex parte*”**

- the Order is made without telling the other person when you apply
- the Court sends (“serves”) the Order to the other side
- important because telling the other person in advance would probably put you or your children at risk

# *How to Get a Restraining Order*

Getting an **urgent and “*ex parte*”** restraining order

## **b) “*ex parte*”**

- the other person will be able to respond after you get the Restraining Order
- an *ex parte* Order is **only in effect for 14 days** (the Order will say the start and end dates)
- both sides go to Court to argue whether the Restraining Order stays in effect
- stays in effect unless the Court makes an Order to change or end the Restraining Order
- if the other person doesn't go to Court, the Restraining Order stays in effect



## *Factors the Court Will Consider*

# *Factors the Court Will Consider*

- You need to show that you have **reasonable grounds to fear** for your own or your children's safety
  - your fear can be for either your psychological or physical safety
  - the judge will consider whether another person in your same situation would be afraid for their safety
- Consider factors like:
  - threats your partner has made
  - evidence of past violent incidents
  - violence or threats towards your children
  - stalking behaviour

# *Evidence to Show You Need a Restraining Order*

- You can support your request for an Restraining Order with:
  - details of your own story
  - information about criminal charges against your partner
  - hospital or doctor's records showing injuries or violence
  - harassing or threatening text messages
  - statements from people who have seen abuse (witnesses)
- **More details will make your application stronger**



# *How to Apply for a Restraining Order*

# *Do I Need a Lawyer?*

- It is always better to have a lawyer, but you **do not need** a lawyer to get a Restraining Order
  - Duty Counsel at the Courthouse may be able to help
- Others can support and guide you through the process:
  - Family Court Support Worker
  - shelter worker

# *Basic Steps: Asking the Court for a Restraining Order*

- Go to the Courthouse:
  - near where your children live,
  - if you don't have children involved, near the matrimonial home or near where you live
- Ask to file a Restraining Order on its own, by filing a “Notice of Motion” and an “Affidavit”
- Different from filing an Application to start a family court case

<http://ontariocourtforms.on.ca/en/family-law-rules-forms/restraining-orders-with-auto-complete-macros/>

# *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 it to other side
- Then you have to send or “serve” the documents (evidence) you gave in Court to the other side

# *Sharing Documents*

- To “serve” documents means giving a person all the documents that the Court rules require
- To serve documents, you need proof that the documents were delivered or sent
- How to serve documents:
  - to your partner directly or their lawyer
  - by hand delivery, mail, fax or courier
  - you can ask your lawyer to serve the documents
  - you can pay a professional “process server” to deliver the documents
- If you don’t know where the other person is, tell the Court in your evidence, and ask the Court how to serve the other person

# *Sharing Documents*

- If the other person wants to stop the Restraining Order in Court, they can file a response
- other person has to send (serve) you their response and evidence before you both go to Court

# *Safety Planning*

After the other person has been served with a Restraining Order and your documents

- remember that the other person has seen everything in your evidence
- tell your lawyer if you have safety concerns
- have a safety plan
- ask about safety at the Courthouse
- talk to a women's shelter or community agency for support

# *Going to Court*

- To ask for an urgent and *ex parte* Restraining Order, you go directly to the Courthouse
- If you get a Restraining Order, it is only for 14 days, and you will have to go back to Court
- The Court hearing is when a judge will listen to both sides and decide whether to keep the Restraining Order in place
- You have to go to Court on the scheduled hearing date
- You can ask police at the Courthouse to go with you into Court

# *Keep Your Restraining Order With You*

- After a judge orders the conditions in a Restraining Order
  - the Court office puts it in official form
  - you can get certified copies from the Court
- Keep a copy with you at all times
- You can give other copies to your work, school, and your child's school or daycare
  - any place where you may need help if your partner shows up
- Your Restraining Order is filed with the police (CPIC)



## *What if My Partner Does Not Follow the Restraining Order?*

# *Breach of 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 a **criminal offence**
  - an offence on its own
  - can be added to other offences
- If you call the police, they can **arrest and charge** the person who breaches the Restraining Order

# *What Can I Do?*

If your partner does not follow the Restraining Order:

- make sure to write down the time, place and details of every time the Order is not followed
- consider calling the police
- follow your safety plan
- protect the safety of you and your children
  - the police may not come quickly
  - the police may not arrest or lay a charge

# Presenters

**Tamar Witelson**  
Legal Director, METRAC



**Malerie Rose**  
Rose Family Law, Toronto



# *Sample Situation*

Jo and her partner Alex are having problems. Over the last few years, Jo felt that Alex was getting very controlling and having angry outbursts.

After a big argument recently, they decided to end their relationship. They have two children and Jo is going to continue to be the parent who looks after them most of the time.

Since the breakup, Alex has been calling Jo 5 to 10 times a day, even in the middle of the night. Sometimes Alex stands outside the children's school when Jo is picking them up, without arranging a visit with the children. Alex also sent his sister to Jo's office to try to convince Jo to get back together with Alex.

Now Alex is sending texts and voicemail messages threatening suicide if the family does not get back together. Jo is getting scared that Alex will hurt her or the kids.

**True or False: Jo can't get a Restraining Order against Alex unless they were married or lived together?**

## *Sample Situation*

False.

In this situation, it does not matter whether Alex and Jo were married or have lived together for any length of time, because they have children together.

In Ontario, you can get a Restraining Order from Family Court against the other parent who makes you feel afraid.

## *Sample Situation*

**True or False: Alex can't apply for a Restraining Order yet, because they have not started a case in Family Court.**

## *Sample Situation*

False.

Jo does not need to start a family law case to get a Restraining Order.

She can go to Family Court and apply for a Restraining Order on its own.

**What could Jo say if she wants an urgent and *ex parte* Restraining Order?**

## *Sample Situation*

### **What could Jo say if she wants an urgent and *ex parte* Restraining Order?**

- a) Jo and Alex have recently separated
- b) They have two children together
- c) The children are living with Jo now
- d) Jo is afraid that Alex will hurt her or the kids
- e) Alex seems to be getting more and more upset about the breakup
- f) Jo needs a Restraining Order right away
- g) Jo is worried about what Alex would do if he knew she was asking for a Restraining Order

## *Sample Situation*

### **What could Jo say if she wants an urgent and *ex parte* Restraining Order?**

- h) Give copies of Alex's texts and voicemails threatening suicide
- i) Show phone records of when Alex has called Jo (how often and the time)
- j) Get evidence from Alex's sister about Alex's depression and determination for the couple to get back together
- k) Give evidence from the kids or a witness who saw Alex at the children's school



## *What's a Peace Bond?*

# *Peace Bonds*

- A **Peace Bond** is another kind of Court Order that can help keep an abusive person or partner away from you
- Peace Bonds are orders from a **criminal Court**
- A Peace Bond is like a Restraining Order
  - it puts **limits** on what a person can do if they are making you feel afraid for your safety
  - not following any part of a Peace Bond is a **criminal offence**

# *How are Peace Bonds and Restraining Orders Different?*

- A **Peace Bond** can order limits on anyone:
  - person you never lived with (person you dated)
  - family member
  - known person or a stranger
- A **Restraining Order** can only be for:
  - current or former married spouse
  - intimate partner or person you lived with
  - person you have a child with

# *How Are Peace Bonds and Restraining Orders Different?*

- A **Peace Bond** can be ordered if you are afraid for the safety of:
  - yourself
  - your child, spouse or partner
  - your property
- A **Restraining Order** can only be ordered if you are afraid for the safety of:
  - yourself
  - a child you have custody of

# *How Are Peace Bonds and Restraining Orders Different?*

- **A Peace Bond** is ordered by a **criminal Court**
  - you can apply for a Peace Bond on its own, without any other criminal charge
  - can be part of the Court's Order to deal with another charge, such as domestic assault
- **A Restraining Order** is ordered by a **Family Court**
  - you can apply for a Restraining Order on its own
  - can be part of a family law case dealing with other issues

## *When Can You Get a Peace Bond?*

- If you have a **reasonable fear** about the safety of you, your partner or your property
- The Court will have to believe your fear is reasonable
- You will need evidence that your fear is reasonable, such as:
  - showing threats, police or court records of violence, proof of unwanted contact

# *How to Get a Peace Bond*

You can ask to apply for a Peace Bond by:

- going to the police
- going to a Justice of the Peace, at your local Courthouse

# *Limits of a Peace Bond*

- Remember: Peace Bonds and Restraining Orders cannot protect you from someone who ignores the order
- If a person does not follow any part of their Peace Bond:
  - make sure to write down the time, place and details of every time the order is not followed
  - consider calling the police
  - follow your safety plan
  - protect the safety of you and your family
    - the police may not come quickly
    - the police may not arrest or lay a charge

## *Sample Situation*

Jo and her partner Alex are having problems. Over the last few years, Alex got very controlling and angry.

After a big argument recently, they decided to end their relationship. They have two children and Jo is going to continue to be the parent who looks after them most of the time.

Since the breakup, Alex has been calling Jo between 5 and 10 times a day, even in the middle of the night. Sometimes Alex stands outside the children's school when Jo is picking them up, but no visit has been planned. Alex also sent his sister to Jo's office to try to convince Jo to get back together with Alex.

Alex is leaving texts and voicemail for Jo that he will commit suicide if the family doesn't get back together.

**What restrictions could Jo ask the Court to put in a Restraining Order (or Peace Bond) against Alex?**

# *Sample Situation*

## **A Restraining Order against Alex could include:**

- no contact at all with Jo, the children or any of them including by phone, text, email, through others
- or no contact except through their lawyers
- police are told to enforce the order if Jo asks them to
- Alex must stay 500 metres away from the home where Jo or the children are living, her work, her car, her place of worship, the children's school, and any other place where they may reasonably be expected to be. |

# Presenters

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## *Additional Resources*

# *Domestic Violence and Abuse*

**For information, if your partner is abusive or violent:**

**Assaulted Women's Helpline** <http://www.awhl.org/>

- 24 hours/7 days; multiple languages
- 1-866-863-0511; TTY: 1-866-863-7868 (no charge)

**Legal Aid Ontario** [http://www.legalaid.on.ca/en/getting/type\\_domesticviolence.asp](http://www.legalaid.on.ca/en/getting/type_domesticviolence.asp)

- Available to every immigration status
- Free telephone interpretation services for languages other than English and French
- 1-800-668-8258; TTY: 1-866-641-8867 (no charge)

**Family Violence Authorization Program (Legal Aid Ontario)**

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters and community legal clinics
- 1-800-668-8258; TTY: 1-866-641-8867 (no charge)

**Barbra Schlifer Commemorative Clinic, Toronto**

- <http://schliferclinic.com/>
- (416) 323-9149

# *Domestic Violence and Abuse*

## **Community Supports**

- Talk4Healing 1-855-554-HEAL (no charge)
- Ontario Federation of Indigenous Friendship Centres [www.ofifc.org](http://www.ofifc.org)
  - Aboriginal Family Courtwork Program
- Sheltersnet [www.sheltersnet.ca](http://www.sheltersnet.ca) – for a women’s shelter near you
- Victim Crisis Assistance and Referral Services (VCARS)
  - Immediate, on-site service to victims of crime 24 hours a day, 7 days a week
  - 1-888-579-2888 (no charge)
  - Toronto: 416-314-2447
- Victim Support Line (VSL)
  - province-wide, multilingual, toll-free information line providing a range of services to victims of crime
  - Services available from 8 a.m. to 10 p.m., 7 days a week in 13 languages
  - 1-888-579-2888 (no charge)
  - Toronto: 416-314-2447

# *Family Law Information*

## ***Family Law Education for Women (FLEW)***

[www.onefamilylaw.ca/en/resources/](http://www.onefamilylaw.ca/en/resources/)

## ***Femmes ontariennes et droit de la familles (FODF)***

[www.undroitdefamille.ca/](http://www.undroitdefamille.ca/)

## ***Ontario Women's Justice Network (OWJN)***

[www.owjn.org](http://www.owjn.org)

## ***Family Law Information Centres (FLICs)***

[www.legalaid.on.ca/en/getting/type\\_family.asp](http://www.legalaid.on.ca/en/getting/type_family.asp)

## ***Family Law Services Centres (FLSCs)***

[www.legalaid.on.ca/en/contact/contact.asp?type=flsc](http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc)

# Additional Resources

## **Law Society of Ontario Lawyer Referral Service**

<https://lso.ca/public-resources/finding-a-lawyer-or-paralegal>

- 1-800-268-8326 (no charge)
- Toronto: 416-947-3330
- TTY: 416-644-4886

## **Toolkit for a good Client-Lawyer Relationship**

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

## **Ministry of the Attorney General**

<http://www.attorneygeneral.jus.gov.on.ca/english/>

[https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/restraining\\_order/](https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/restraining_order/)

- 1-800-518-7901 (no charge)
- TTY: 1-877-425-0575

## **Find a community legal clinic near you**

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

## **211 Canada.ca**

<http://211canada.ca/>

# *Additional Resources (Courts)*

## **Online forms**

<http://www.ontariocourtforms.on.ca/english/family/>

## **Ontario Court Forms Assistant**

<https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>

- Get help online to complete family court forms

## **Ontario Courts**

<http://www.ontariocourts.on.ca/>

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
  - Superior Court of Justice <http://www.ontariocourts.ca/scj/en/famct/>
  - Ontario Court of Justice <http://www.ontariocourts.ca/ocj/family-court/overview/>

## **Ontario Court Locations**

[http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court\\_Addresses/](http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/)

- Find court addresses across Ontario

## **Court Prep**

[www.courtprep.ca](http://www.courtprep.ca)

- provides information on the Canadian legal system and prepares victims and witnesses to give evidence