

Restraining Orders, Peace Bonds and Terms of Release

Legal Information Workshop for Women Experiencing Violence
Developed by Metrac & OWJN

Why would I get a Restraining Order, Peace bond or Terms of Release?

- If you feel threatened by a partner or ex-partner.
- If you feel threatened by another person.
- If you are being stalked.

What are they?

Restraining Orders, Peace Bonds and Terms of Release are issued when a court believes one person may cause injury to another person and/or to members of her family, or when the court sees that you have “reasonable fear” of this other person.

These legal orders restrict the behaviour of the person who is threatening or stalking you. The court may order that this person:

- Stay away from you and/or your family members (include min. distance)
- Not communicate with your and/or your family members in any way.
- Not possess firearms, ammunition etc.

RESTRAINING ORDERS

Specifics:

- Takes place in Family Court, judge only (no Jury)
- **Only applies to partners and ex-partners** (husband, common-law, boy/girl-friend)
- Is not applicable for threats to or actual damage of property
- Length varies: usually last for several months; however, could also be for only a few days or could be a permanent order.

How do I get one?

Usually applications for restraining orders are made as part of a larger court proceeding under the Family Law Act (FLA), but you can apply for just a restraining order. It will require a formal submission, evidence and a hearing at which both sides can make their claims. The process can take many months. *See below.*

Getting a Peace Bond or Restraining Order

A Judge or Justice of the Peace needs certain information before s/he can grant you one of these court orders:

- s/he must believe on a balance of probabilities that your fear is reasonable: this means a similar person in your position would also be afraid.
- You cannot make emotional pleas with evidence, therefore you should:
 - Document every time the person stalked you or threatened you.
 - Keep any evidence of abuse such as hospital records, photographs etc.
 - In the case of a partner/ex-partner, if applicable, evidence of his mistreatment of your children.
 - For Peace bonds only, document every time the person damages your property of threatened to; take photographs if possible.

If you fear for your immediate safety: you can ask the court for an *ex parte* Restraining Order. This may be required if your ex-partner is getting out of jail, or there is some other immediate reason that causes you to fear for your safety. In such a case, your ex-partner is not notified of the application, and the judge can issue the order immediately upon being

convinced of the evidence. This type of order is usually only in effect from 24 hours to one week, to allow you to be safe while your ex-partner is notified and given the opportunity to tell his side of the story.

If you obtain a restraining order, be sure you get *certified copies* of it for yourself and anyone else appropriate (children, family etc.) eg. Daycare works or school principal should have copies if he breaches the order.

Do I need a lawyer?

It is always better to be represented by a lawyer when dealing with an abusive, threatening or harassing partner/former partner.

Your local shelter or women's group often keep a list of lawyers who understand family violence.

See [Legal Representation](#) for more info.

PEACE BOND

Most commonly, someone will apply for a peace bond after trying unsuccessfully to have the police lay a charge against another person.

Specifics:

- Take place in front of a Justice of the Peace (JP)
- Considers threats to or acts that damage your property, as well as personal threats and acts of violence to your person or family members.
- Also described as 'entering a recognizance' or called an '810'.
- Can last up to 12 months
- If your abuser or stalker refuses to sign this document, he will be jailed up to 12 months.
- A peace bond is not a criminal charge, but breaching one is an offence.

How do I get one?

- The police do not need to be involved.
- Make an appointment with the JP at the provincial court to explain why you are seeking a peace bond.
- If the JP agrees with your concern, s/he will issue a summons requiring the other person to appear in court on a specific date.
- At this appearance:
 - You will give evidence under oath describing why you are in need of the Peace Bond (see above).
 - The other person will have the opportunity to rebut your argument
 - The JP will decide whether or no the Peace Bond should be issued.

Mutual Peace bonds: Often JP's will issue a mutual peace bond requiring that you cannot seek out your partner/ex-partner as well. This suggests that you have done something to provoke the harassment, which is not often the case. Also, your partner/ex-partner may try to set you up to break the mutual peace bond. ***If possible, avoid mutual peace bonds. If you contact your partner/ex-partner for whatever reason you get charged.***

Do I need a lawyer?

Most women represent themselves for Peace Bond applications.

Either or both of you can have lawyer represent you in the court appearance. If you choose to, your hearing will likely be adjourned (delayed) at least a few weeks while you and/or your harasser hire lawyers. **Legal Aid is not available for Peace bond applications.**

What happens if a Restraining order or Peace Bond is breached?

- Go to a safe place
- Have a copy of the order with you
- Call the police; they can charge the person breaching the order and he may serve jail time.

Be aware: Often the police have not been helpful in enforcing these orders; they may refuse to press charges or minimize complaints. If the officer responding to your call does not provide an effective remedy, you should talk to the supervisor. You should also talk to the Victim Witness Assistance Program Staff about what should happen next time the order is broken.

* Also request to speak with an officer from the Major Case Unit as they specifically deal with stalking (criminal harassment).

TERMS OF RELEASE

Specifics:

- When a person has been charged by the police and there has to be a bail hearing before he is release from jail.
- This hearing usually takes place a day or two after the charge is laid.
- A JP or a judge make the bail decision based on evidence provided by the Crown Attorney and the accused's lawyer.
- Where there is a victim, such as in a case of assault or criminal harassment, there will almost always be a requirement that the accused stay away from her: this called a "term of release".
- Th bail condition will stay in place until the criminal proceedings are over (when the accused is found guilty or not guilty or the charge is withdrawn)
- Bail conditions can be changes, but the victim must consent if the accused wants the no contact order dropped.

How do I get one?

- When the accused is being released on bail the Crown Attorney will ask you what you need to feel safe: you should say that you do not wish him to be able to approach you, call you etc. The Crown Attorney will suggest these conditions as Terms of Release to the court. A JP or judge will make a decision based on these suggestions and on the defence's argument.

Go to V WAP to ask them to help you approach the Crown Attorney.

What happens if he breaches it?

- He can be charged with breaching his bail conditions.
- He should be re-arrested and brought in front of the court for a new hearing, with new conditions on his release.