



**Community Legal Information Association of
Prince Edward Island, Inc.**

Court Orders

For Your Protection

Introduction

The legal system can help protect you from an abusive family member. There are a number of court orders that can restrict one person's contact with another. Each kind of order has a different procedure for applying. You can get some orders on your own. For other orders, you need to have a lawyer or a police officer act on your behalf.

Important: Even if you have a court order for your protection, you should still have a safety plan to help keep you and your children safe. This is important because the person who harmed you may decide to disobey the order.

Court orders are available through the criminal law system in Provincial Court and Supreme Court, and the family law system in Supreme Court.

This booklet explains the following orders:

Criminal Law Orders for Your Protection

1. Undertakings
2. Probation Orders
3. Peace Bonds

Family Law Orders for Your Protection

1. Restraining Orders
2. Emergency Protection Orders
3. Victim Assistance Orders

Criminal Law Orders for Your Protection

There are three kinds of orders available through the criminal law system that may contain conditions for your protection:

1. **Undertakings** (issued by a police officer or justice of the peace)
2. **Probation Orders**
3. **Peace Bonds** (also called Recognizances)

1. Undertakings

If the person you are afraid of has been arrested and is charged or is going to be charged with an offence against you or another family member, he or she may be released by the police or court official on an undertaking. If the person is released, certain conditions are likely to be imposed. These conditions usually include an order for the person not to have any contact or communication with you, directly or indirectly, and not to be near where you live or work.

To make sure that the order includes the conditions you need, tell the police officers who arrested the accused person what you think he or she might do to harass you.

These conditions stay in place for as long as the court is dealing with the charges, or until the conditions are changed or deleted from the undertaking. You cannot apply to have the conditions changed. Only the Crown Attorney or the accused person can apply for changes.

If the accused person disobeys these conditions, tell the police immediately. The person may be arrested for breaching (disobeying) the undertaking. A person who breaches an undertaking may have to stay in custody until his or her charges are dealt with by the criminal courts. During that time if you encourage the accused person to have contact with you, or if you agree to have contact with that person, you may also be charged with a criminal offence.

2. Probation Orders

If a person has been found guilty of a crime against you or another family member, the court may put him or her on a probation order as part of the sentence. In the probation order, the court may impose conditions on the offender's behaviour for a period of time.

For example, the offender may have to attend assessment, counseling, and/or treatment that may include programs in the area of drugs and alcohol, anger management, or the Turning Point Program. He or she may also be ordered not to contact you, your children or family members, or go near your home. In some cases the Judge will order that the

probation officer is to have the authority to allow for contact if it is appropriate in the circumstances. You cannot apply to have the probation conditions changed. Only the Crown Attorney, the probation officer, or the offender can apply for changes. A court can impose probation conditions for up to three years unless the offender receives a jail sentence of more than two years.

If the person who is bound by the probation order breaches (disobeys) any terms in the order that involve staying away from you and your family, call the police immediately. You may also wish to call Victim Services, if you are working with them, and Probation Services.

3. Peace Bonds

A peace bond is a court order to protect a person, his or her family, or personal property against violent actions by another.

How do I get a peace bond?

You can apply for a peace bond against any person causing you to fear for your personal safety or for your property. The court will order a peace bond only if it is convinced that you have a good reason to be afraid.

To get a peace bond, either you, or a police officer on your behalf, must apply through the provincial court. Provincial courts can be found in Georgetown, Charlottetown and Summerside.

What happens after I apply?

- You, or the police officer, will be asked to sign a document called *an information*, which is a sworn statement about why you fear for your safety.
- The Provincial Court will set a date for a court hearing.
- The other person will be served *a summons* to appear in court on that date.
- If you sign *the information*, you must be in court for the first hearing or your application will be dismissed.
- If the police officer signed the information, you do not have to be in court on the first date. Usually a police officer will appear for the peace bond and the officer will arrange for the person you fear to be in court.

- When the application first comes before the court, the person will be asked if he or she agrees that you have a reason to be afraid.
 - a) If he or she agrees, the peace bond will be issued.
 - b) If he or she disagrees, the court will order that a hearing be held. The police will give you a piece of paper, called *a subpoena*, telling you when you must be in court.

Until the hearing is held, you will not have a peace bond, although the police officer or a justice of the peace may issue an undertaking signed by the person you are afraid of which says that he or she will not come near you. If you appear at the court hearing and the other person does not, the hearing may still go ahead.

At the hearing, you will have to give evidence to convince the judge that you need the peace bond. It is important to give examples of things that happened that made you feel afraid. If you have any witnesses to those things, ask them to testify in court for you. You should also tell the judge if you want certain conditions in the peace bond. For example, you may want the person to stay away from your home or place of work.

Why is it important for me to have a certified copy of the peace bond?

If the court orders a peace bond, you should get a certified copy of it from the court clerk. If you need to call the police, this will make it easier to prove that you do have a peace bond against the person you fear.

How long will my peace bond last?

The judge will set the length of time the peace bond stays in effect. In most cases, the peace bond will be in effect for a period of up to one year. However, in some circumstances, if the person has been convicted of a sexual offence against someone under the age of 16 or convicted of a violent offence, the judge may order that person to enter into a peace bond of up to two years. The peace bond cannot be renewed, but you can apply for a new one if you still have reason to fear this person. The person who signed the information or who is bound by the peace bond can also apply to Provincial Court to change it.

What do I do if I suspect the person has breached a peace bond?

If the person who is bound by the peace bond breaches (disobeys) any of the conditions of the peace bond, call the police immediately. The person can be charged and punished for breaching the court order.

It is important to remember that, here in PEI, chance encounters may occur innocently. Common sense and good judgment are required. You might, for example, meet someone who is not allowed to have contact with you in a public place. As long as no attempt is made by that person to speak to you or approach you, the best course is for both parties to move on to another area or activity. This type of situation should be noted by you (time, place etc), but need not be reported to police unless a pattern develops or actual contact is made. If you initiate or agree to have contact with the person who is bound by the peace bond, you can also be charged with a criminal offence.

Family Law Orders for Your Protection

There are three kinds of court orders available through the family law system that may contain conditions for your protection:

1. **Restraining Orders**
2. **Emergency Protection Orders**
3. **Victim Assistance Orders**

1. Restraining Orders

A restraining order is a court order under the *Family Law Act* that requires your partner or former partner to refrain from “molesting, annoying or harassing” you or the children in your lawful custody. You can only apply for a restraining order if you are already living apart with no plans to live together again. These orders apply to common law couples as well as to those who are legally married.

Restraining orders are broader than peace bonds in that they can be used in harassment and annoyance situations. An example of such a situation may be one in which someone who is separated from his or her partner constantly telephones their ex-partner and goes to his or her house without actually threatening any harm.

How do I get a restraining order?

To get a restraining order, you need a lawyer. You can go to a private lawyer or, if you qualify financially and are a victim of family violence, you can ask for help from Family Legal Aid. Family Legal Aid is available to low-income victims of family violence. To find out if you are eligible for family legal aid call:

- The Legal Aid Office at 368-6043 in Charlottetown or 888-8066 in Summerside, or
- Victim Services and talk to a worker who will make a referral in appropriate cases. You can reach Victim Services at 368-4582 in Charlottetown or 888-8217 in Summerside.

2. Emergency Protection Order

An emergency protection order provides immediate action to protect you if you are a victim of family violence in an emergency situation. It is:

- available 24 hours a day
- ordered by a justice of the peace
- effective as soon as the abuser is served a copy of the order unless a justice of the peace orders that service of the order is not required because the abuser seems to be trying to evade service
- remains in effect for up to 90 days

How do I get an Emergency Protection Order?

Usually a police officer applies for an emergency protection order on behalf of the victim. In some cases, a Victim Services worker may also apply for an emergency protection order on your behalf.

An emergency protection order is made only if a justice of the peace is satisfied that family violence has happened and your situation is serious and urgent.

The justice of the peace forwards one copy of the emergency protection order and all supporting documents to the court. The order and documents are reviewed within five working days by a judge of the Supreme Court who decides whether to confirm or change the order or re-hear all or part of the application. You and the abuser (called the

respondent) will be given notice of any rehearing and both of you may attend and tell the judge why the order should be changed or remain the same. If the Judge does not ask for a hearing, the respondent may apply to the court to have the conditions changed. You will then be given notice of the hearing so that you can tell the Judge why you think the order should not be changed.

What happens when the order is granted?

An emergency protection order can:

- direct a police officer to remove the abuser from the home
- order the abuser not to contact the victim or the victim's family, or other specified person
- order the abuser to stay away from any place identified in the order
- order the abuser not to take, sell, or damage property
- order the abuser not to commit any further acts of violence against the victim
- give the victim temporary possession of specified personal property (such as a car)
- give the victim exclusive occupation of the home (for a stated period of time)
- give temporary custody or day to day care of a child to the victim or another person
- direct a police officer to accompany the victim or the abuser to the home to supervise removal of personal belongings
- prohibit the publishing of the victim's name and address
- restrain the abuser from terminating the basic services of utilities (telephone, electrical, water and sewage)
- require the abuser to make rent or mortgage payments on the residence
- extend protection to family members of the victim in appropriate circumstances

3. Victim Assistance Order

Victim assistance orders are meant as a longer-term remedy for victims of family violence. They can be used when the situation is not an emergency, or the emergency protection order is about to expire and the situation is no longer an emergency.

What is the Victim Assistance Orders Information Kit?

The Office of the Attorney General has published a Victim Assistance Orders Information Kit. This is available at Victim Services to help you make an application on your own behalf or gain a better understanding of the law before meeting with a lawyer.

How do I get a Victim Assistance Order?

Applying for a victim assistance order is a legal process and it is a good idea to talk with a lawyer for advice and help. If you do not have a lawyer, the *Lawyer Referral Service* may be of help. Through this service you may speak with a lawyer for thirty minutes at a cost of \$10 plus PST and GST. You can reach the *Lawyer Referral Service* at 892-0853 or 1-800-240-9798.

Family Legal Aid is available to low-income victims of family violence. To find out if you are eligible for family legal aid, call:

- The Legal Aid Office at 368-6043 in Charlottetown or 888-8066 in Summerside, or
- Victim Services at 368-4582 in Charlottetown or 888-8217 in Summerside and talk to a worker who will make a referral in appropriate cases.

What happens after I apply for a Victim Assistance Order?

An application for a victim assistance order is made to a judge of the Supreme Court. The judge will make a decision to grant the order or not. This usually takes about 10 days.

A judge who orders a victim assistance order may include all the conditions that can be ordered when an emergency protection order is granted and may also include a provision for access to children and any other condition the judge considers appropriate.

At your request, your address will be kept confidential when an application for a victim assistance order or an emergency protection order is made and, at your request, other information may also be protected.

This pamphlet has been prepared and published by Community Legal Information Association of Prince Edward Island, Inc. (CLIA). It contains general information about one area of the law only: obtaining court orders. It does not contain a complete statement of the law in this area and it does not provide legal advice.

To obtain legal advice, contact a lawyer. If you don't know a lawyer, call the Lawyer Referral Service at 892-0853 or 1-800-240-9798 toll-free. The Lawyer Referral Service provides a half-hour appointment with a lawyer for \$10 plus tax. As changes in the law occur, the information in this pamphlet may go out of date. For further information call Victim Services at 368-4582 in Charlottetown and 888-8217 in Summerside.

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For more information, you can telephone CLIA at 892-0853 or 1-800-240-9798, visit our website at www.cliapei.ca or email us at clia@cliapei.ca.

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