

RESTRAINING ORDERS

A Restraining Order, which is a civil law remedy, restrains one party from having contact with another. A Restraining Order in family law matters can only be granted by the Court of Queen's Bench. Although the victim can apply for a Restraining Order her/himself, it is easier with the assistance of a lawyer. In some areas, there are agencies to assist the victim to obtain a Restraining Order quickly and at little or no expense. For example, the Protection and Restraining Order Program in Edmonton, the Court Preparation and Restraining Order Program in Calgary, also the Family Law Information Centres in both Edmonton and Calgary provide assistance.

In order to obtain a Restraining Order, three documents are required.

1. A document must be filed starting a court action. The court action is started in the Court of Queen's Bench in the jurisdiction where the victim resides. Sometimes that court action takes the form of a divorce action, an annulment action, and an action claiming damages for personal injury or harassment. Restraining Orders may be granted for emotional abuse (i.e. threats to harm or kill or for conduct that is characterized as stalking and harassment). All of the Court Houses have packages with pre-printed forms of the statement and the Restraining Order.
2. The second document that is required by the Court of Queen's Bench is a sworn statement in the form of an affidavit or completed questionnaire. The sworn statement is a history or detail of the reasons why the victim is seeking a Restraining Order.
3. The third document that is required is the actual form of the Restraining Order. This form is a standard set of prohibitions and directions that must be included in every Restraining Order granted in Alberta. For example, all Restraining Orders contain a standard prohibition from going within 200 meters of the victim or 6 city blocks of the victim's residence. It is possible to ask a Justice to change the terms of the Restraining Order to reflect certain changes in the form of the Restraining Order, for example increasing the prohibition from 6 city blocks to 8 city blocks, or including a school or day care. All Restraining Orders granted in Alberta must have an enforcement clause or the law enforcement agency will not arrest the respondent in the event that the Restraining Order is breached.

Many Restraining Orders are granted without notice to the respondent, because to give notice to the respondent of the intention to obtain a Restraining Order can put the victim at increased risk of harm. However, Restraining Orders are not available outside of normal hours, such as evenings or weekends. Therefore, the victim requiring protection may be left in a dangerous situation. Furthermore, a Restraining Order requires that the respondent be served (i.e. officially notified or handed) a copy of the Order. It is possible to ask for a second Court Order allowing the Restraining Order to be substitutionally served or to have service dispensed with all together.

A Restraining Order can be put into effect quickly – often within 24 hours of meeting with a lawyer or getting help from a community agency. A Restraining Order is usually ordered for between three (3) and six (6) months, but can be renewed with it expires. In very exceptional cases, where the evidence is present, a Restraining Order can last indefinitely.

It is important to note that there is often an automatic review process with respect to Restraining Order. A Restraining Order is reviewed within two weeks by a second Justice in the Court of Queen's Bench. At that time, the victim and the respondent, or their lawyers, appear and on the basis of further sworn statements, the Justice will decide if the Order should continue in effect or not.

A Restraining Order can also be issued against more than one person. As with a Peace Bond, the court will require evidence in order to justify restricting the liberty of another person(s). It will be helpful if the victim has kept a record of any incidences or any police, medical, or counselling records.

A current copy of the Restraining Order should be kept with the victim at all times so that she/he can show it to the police if the order is violated.

Costs Incurred. In terms of costs, it may depend on who is doing the work for the victim and whether the Order is part of another action, such as divorce or assault. If the victim is applying for a Restraining Order, her/himself, there may be no court fees, but a process server will be required to serve the Order to the abusive person. This can be expensive if the abusive person is difficult to locate. It is possible to ask for a second court Order allowing the Restraining Order to be substitutionally served or to have service dispensed with all together but this is also an expense.

Community legal clinics may serve the accused with the Restraining Order saving the victim from having to do so.

Registering a Restraining Order. In addition, the victim should make sure that the Restraining Order is registered with the local police. The victim or the victim's lawyer can contact the local police and request that the Restraining Order be registered in the police computer system and given a case number. This means that any police officer will have access to information about the Restraining Order and its conditions. If it is not registered, the police will not know that there is a Restraining Order and what the conditions are and, therefore, will not be able to enforce it.

Violation or Breach of a Restraining Order. A violation or breach of a Restraining Order can only be dealt with through the court's power to cite for civil contempt. Although section 127 of the Criminal Code does apply to violations of Court Orders, the Criminal Code is not used in Restraining Order breaches. The victim must report the breach, complete a witness statement for the police and be prepared to attend Court when the respondent is arrested. The victim must pay for their lawyer to attend Court when a Restraining Order has been breached.