

What you need to know about... Restraining Orders

What is a restraining order?

A restraining order is a type of no contact order that can be issued by a judge of the Court of Queen's Bench. If you are not eligible for an Emergency Protection Order (EPO) or Queen's Bench Protection Order (QBPO), then a restraining order may be your next best option, especially if you need help right away. If your safety is at-risk, you may be able to apply for a restraining order without giving notice of your application to the abusive party. A restraining order can do the following:

- Require the abusive party to:
 - Stay away from your home, place of employment, or other place that you attend frequently such as your parent's home. However, please be aware that restraining orders cannot be used to remove an abusive party from a residence where he or she has the legal right to live – only an EPO or QBPO can do this.
 - Stop harassing, watching, following, telephoning, or interfering with you directly or indirectly.
- Allow police to arrest the abusive party if the order is not being followed. It is important to make sure the court includes a law enforcement provision in the order to allow police to enforce the order.

If you want to discuss whether a restraining order is the right option for you, call the Family Violence Info Line at 310-1818 or visit your local family violence information centre or shelter. If you are in immediate danger, call 911 for help.



It is recommended that you seek assistance from a lawyer to apply for a restraining order. If you cannot afford a lawyer, contact Legal Aid Alberta at 1-866-845-3425, check with your local legal clinic (see full list at http://www.pbla.ca/gethelp/item.5602-Help_for_Individuals), or contact Resolution and Court Administration Services, visit www.rcas.alberta.ca or call 1-855-738-4747. Resolution and Court Administration Services can provide you with a kit to make an application for a restraining order

When can I apply for a restraining order?

You can apply for a restraining order against anyone who is causing you to fear for your safety. This can include any of the forms of family violence outlined below as well as any other behaviour that causes you to fear for your safety. It will ultimately be up to the judge hearing your application to decide if your fear is reasonable in the circumstances.

Examples of domestic violence that may support a restraining order application:

- Actions that cause personal injury, property damage, or intimidation. This can include punching, kicking, damaging doors or walls, among other things.
- Failure to provide food, shelter, or medical attention for the purpose of intimidation.
- Threats that cause reasonable fear of injury or property damage and intimidation. This can include emotional and mental abuse in certain cases, particularly if there is a history of threats being carried out.
- Forced confinement (for example, being locked in a room with no way out).
- Sexual contact that is the result of force or threat of force.
- Stalking or harassment (for example, non-stop phone calls, e-mails, or text messages).

You will have to explain in your application what behaviour you want the court to stop and why you fear for your safety.

How do I apply for a restraining order?

If you have the financial resources available, it is a good idea to hire a lawyer to help you apply for a restraining order and represent you at your court hearing. If you plan to represent yourself, you should start by seeking assistance from Resolution and Court Services (visit www.rcas.alberta.ca or call 1-855-738-4747) to determine which court forms you need to fill out and file for your situation. The following is general outline of the steps you will need to take to apply for a restraining order.

1. Fill out the appropriate court forms for your situation.

You will need to fill out an **Originating Application** (Form CTS 3777) and an **Affidavit** (Form CTS 3819) setting out why you need a restraining order. If you are applying for a restraining order without notice against a family member, you should fill out the **Application for a Restraining Order Without Notice in a Family Law Situation** (Form FL-14), which includes a questionnaire instead of an affidavit. A restraining order application without notice can only be made if your situation is urgent or very serious. All forms can be downloaded from: <https://albertacourts.ca/court-of-queens-bench/publications-forms> or contact Resolution and Court Administration Services to request a restraining order kit.

In your affidavit or questionnaire, you will need to set out details of why you need a restraining order, including the dates, history, and nature of the abusive party's conduct, threats, or violence. You will need to indicate if the abusive party has any weapons. It is a good idea to include any copies of police reports, 911 calls, medical reports, and other documentation that can help support your experience. For more information, read **Gathering Evidence of Abuse**, available at www.cplea.ca/publications or www.willownet.ca.

2. **You will need to swear the contents of your affidavit are true in front of a Commissioner for Oaths or Notary Public.** There are serious penalties for including any false or misleading information in your affidavit.



You can find Commissioners for Oaths and Notaries Public in the yellow pages of the telephone book or online at www.YellowPages.ca. All practicing lawyers are notaries public. Commissioners for Oaths can be found in many law and real estate offices. Police Officers, MLAs and Municipal Councillors are also Commissioners for Oaths.

3. **File your restraining order application and affidavit with the Court of Queen's Bench.** When you file your application, the Court Clerk will help you select a court date. Your application and affidavit must then be served on or given to the abusive party that you are making the application against. You can hire a third party service to serve the application or ask a trusted friend or family member. For information on how to serve documents to an abusive party, read the information sheet **Serving Documents on an Abusive Party** by visiting www.cplea.ca/publications or www.willownet.ca.



If it isn't safe to serve your application on the abusive party: In exceptional cases, you may be able to apply for a restraining order without serving the abusive party with a copy of your application. This is called an *ex parte* application and a judge may grant your request to apply for a restraining order without notifying the abusive party if the situation is urgent or your safety is at risk. If a restraining order is granted without notice to the abusive party, there will be a review hearing date set to give the abusive party a chance to respond to the order.

4. **Attend your court date.** If you need legal advice on the day of your hearing, duty counsel lawyers are available at the courthouse to provide brief advice and help explain court procedures. Be sure to get to court early if you think you'll need help from duty counsel as there is often a line up.



Duty counsel lawyers are provided by Legal Aid Alberta at courthouses throughout Alberta. They cannot provide you with full legal representation but can help answer any questions you may have about court proceedings. Call Legal Aid Alberta at 1-866-845-3425 to determine if duty counsel are available in your area.

At your court hearing, be aware that the abusive family member has the right to challenge your version of events in court and he or she may say things you do not agree with. Do not interrupt, make faces, or roll your eyes. Try not to be confrontational or sarcastic. You may have a chance to talk to the judge again to challenge the evidence that you disagree with. It is a good idea to bring a trusted friend or family member with you for support.

After the judge hears from both sides, he or she will determine whether to issue a restraining order.

- 5. If a restraining order is issued, it does not take effect until it is served on the abusive family member.** A third party like a friend, family member, or process server will need to give the restraining order to the abusive party. The person who serves the restraining order will need to fill out an Affidavit of Service and file it with the court after the order has been served. Once it has been served, it becomes an enforceable order. For more information, read **Serving Documents on an Abusive Party**, available at www.cplea.ca/publications or www.willownet.ca.
- 6. Provide your local police or RCMP detachment with a copy of your restraining order,** in case you need to call them to report a breach of the order. Your restraining order must include a police enforcement clause in order for police to respond to a breach of the order.

How long does a restraining order last?

A restraining order starts as soon as it is ordered and served on the abusive party. Restraining orders can last for whatever amount of time is required. They commonly last for one year, but can be continued for longer periods of time or made permanent.

What happens if the abusive party doesn't follow the restraining order?

If the abusive party is not following the rules in the restraining order, call the police. You will likely need to show police a copy of your restraining order. It is very important that you serve the police with your restraining order as soon as it is issued, so that they have a copy on record in case they need to respond to a breach.

Once you have made a report to police, they will decide whether to arrest the abusive party. They will bring the abusive party before a Court of Queen's Bench judge at the next available opportunity. You may be required to appear in court to give evidence of the breach. Crown prosecutors do not assist with this process. You must send your own lawyer or represent yourself. The judge will then decide if a breach has occurred and what penalty to impose. The abusive party can be fined or jailed if the judge finds the order was breached.

It is important that you do not contact the abusive party or allow him or her back into your home while the restraining order is in effect. It makes it difficult to enforce the order

if you initiate or allow contact from the abusive party and could make it hard to get a restraining order in the future.



Be aware that a restraining order is not a long-term substitute for a custody or parenting order, or for an order dividing property. It is to be used for protection and safety only.

What is a mutual restraining order?

This order is basically the same as a restraining order. However, in a mutual restraining order, there are two or more people who are restrained from contacting each other. These orders are generally entered into by consent when one party seeks to obtain or continue a restraining order but neither party wishes to have any contact with the other. Usually, there is evidence that both parties have contributed to the conflict.

The disadvantage of a mutual restraining order is that, depending on the circumstances, it can be more difficult to prove that one party breached the order since both parties are prevented from contacting each other. You are strongly advised to seek legal advice before entering into a mutual restraining order.

Help and Further Information

Family Violence Info Line Available 24/7 in over 170 languages. Call 310-1818.

Legal Aid Alberta's Emergency Protection Order Program (EPOP)

Call 1-866-845-3425 to determine eligibility for services.

Government of Alberta - Resolution and Court Administration Services

Call 1-855-738-4747 or visit www.rcas.alberta.ca to get a restraining order application kit.

Community and Student Legal Clinics

Visit http://www.pbla.ca/gethelp/item.5602-Help_for_Individuals for a complete list of locations and contact information.

Victim Services Alberta

Call 780-427-3460 or visit https://www.solgps.alberta.ca/programs_and_services/victim_services/Pages/VictimServiceUnits.aspx for a list of locations and contact information.



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