

## **APPLYING FOR A RESTRAINING ORDER AT FAMILY COURT**

### **1. How do I apply for a restraining order?**

To apply for a restraining order, you take the following steps.

- Step 1:** Find out which court house you should go to, to apply for a restraining order.
- Step 2:** Decide what decisions you need from the court and if any of them are urgent.
- Step 3:** Complete the application form to start your case
- Step 4:** If you need an urgent order, complete and file motion materials with your application.
- Step 5:** If you don't have a lawyer, ask to have the documents served on (given to) the other person (except if you are proceeding without notice, see page 6).
- Step 6:** File proof at the family court counter that the documents have been served (except if you are proceeding without notice, see page 6). If you are not asking for an urgent order, you will proceed directly to step 10.
- Step 7:** File the "Confirmation" form to say that you will be in court on the date of the hearing (except if you are proceeding without notice, see page 6).
- Step 8:** Be in court on your court date to explain your case.
- Step 9:** If the judge has made the restraining order, ask family court staff for a copy of the restraining order.
- Step 10:** Go to court if necessary to obtain a final order about all of the issues in your case.

The *Family Law Rules* are the court rules that set out the procedure that parties in a family court case must follow. The rules and *Family Law Rules* forms are on the Ministry of the Attorney General's website at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca). Click on "Family Justice" and scroll down to find Family Law Rules or Family Law Rules Forms.

### **Step 1: Find out which court house you should go to, to apply for the restraining order.**

You can apply for a restraining order by filing certain documents at a family court.

You should go to:

- The family court house in the municipality where you or the other person lives; or

- If you fear for the safety of your children or children in your custody, go to a family court in the municipality where the child(ren) ordinarily live.

To assist you in finding the correct court, visit the following link to the Ministry of the Attorney General's website at [www.attorneygeneral.jus.gov.on.ca/english/courts/Court\\_Addresses/](http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/). You can also look in the blue pages of your telephone directory under "Courts" and find the address and telephone number of the family court you need to go to. You can also call the Victim Support Line toll-free at 1-888-579-2888 or 416-314-2447 in the Toronto area.

When you go to the family court, visit the Family Law Information Centre (FLIC). Court staff at a FLIC can help you to understand the family court process, provide you with family court forms and explain how to get a lawyer. An Advice Lawyer from Legal Aid Ontario is also available at the FLIC at certain times. The Advice Lawyer can provide you with general information (free of charge) or, in some circumstances, may be able to give you legal advice specific to your case. For contact information for FLICs, go to the [Resources](#) section at the end of this guide.

## **Step 2: Decide what decisions you need from the court and if any of them are urgent.**

If you have not already started a case in the family court, you will need to file an application. This form starts the court process. The application form sets out all of the issues that you are asking the court to deal with. Your case may involve only a restraining order. Or it could involve a restraining order and something else, such as custody or child support.

Once you file an application there are certain steps in the court process that you and the other person must follow. Normally, it will be a few weeks before you see a judge for the next step in your case. In most cases, you will be required to go to a case conference before you can ask the court for an order. If, however, your situation is *urgent* you can bring a motion to get a restraining order right away.

The *Family Law Rules* do not define the term "urgent". However, cases that have been decided by the courts have shown that there must be "dire circumstances" before the court will deal with a request for a restraining order on an urgent basis. You must provide clear evidence in your affidavit to show why your situation must be dealt with right away. The judge will decide whether your motion for a restraining order will be dealt with on an urgent basis.

A *motion* is a step in a case where you ask a judge to decide issues on a *temporary* basis. For example you may be seeking child support or custody but also need a restraining order right away.

## Urgent Motion ***Without Notice***

A motion without notice to the other person may be made for an urgent restraining order if it is not possible to give a copy of the motion documents to the other person. For example, it may not be possible to give the other person notice if:

- You do not know where the other person can be found;
- There is an immediate danger that your children will be taken out of Ontario or that you or your children will be harmed; or
- Providing notice in advance would probably have serious consequences.

These motions are sometimes referred to as “*ex parte*” motions.

Making a motion without notice means that the other person will not know that you are asking the court for a restraining order and they will not be in court to tell their side of the story on the motion date.

If you bring a motion without notice, the other person will find out about it if a temporary restraining order is granted. The other person must be served with a copy of the order and your motion documents after the order is made. Ask staff at the family court office to arrange to have your documents served. This is a free service. If you have a lawyer, your lawyer will serve the documents for you. If a temporary restraining order is granted, you and the other person will have to come back to court so that the other person can tell their side of the story.

## Urgent Motion ***With Notice***

If you are asking the court to make a restraining order right away, you are asking the court to consider your request for a restraining order before you take the next step in your case. In your motion materials you will need to tell the judge what the urgency or hardship is (that is, the reason that you cannot wait several weeks to get the restraining order). The motion materials must be served (given) to the other person so that they are aware that you are bringing a motion. Ask staff at the family court office to arrange to have your documents served. This is a free service. If you have a lawyer, your lawyer will serve the documents for you.

The judge may decide that the situation was not urgent and could order you to pay the “costs” of the other person. “Costs” may include the costs involved with the case, including legal fees. If you do not have a lawyer, you can ask to speak to the advice lawyer at the family court house to discuss whether the situation is urgent.

You can also find other community services to support you through this process. Try calling the shelter in your community. A shelter can provide support for you and your children, even if you are not living there. Contact [www.shelternet.ca](http://www.shelternet.ca) to find a shelter near you. You can also contact Ontario's Victim Support Line (VSL) which is a province-wide, bilingual, toll-free information line that provides a range of services to victims of crime, including referrals to community agencies for counselling and emotional support. The phone number for the VSL is 1-888-579-2888 or 416-314-2447. There may also be services for your cultural community that may be of assistance. For example if you are a First Nations person, you may consider getting help from a Native Court Worker. Contact the Ontario Federation of Indian Friendship Centres at <http://www.ofifc.org/ofifchome/page/programs/index.htm> or 416-956-7575.

### **Step 3: Complete the application form to start your case.**

To start an application for a restraining order, you will need to complete:

- a) [Form 8: Application \(General\)](#)
- b) a Canadian Police Information Centre (CPIC) Restraining Order Information Form, which is only available at the family court counter.

#### a) How do I complete an Application?

The information that you write on the application form tells the judge what you are asking for. Your application may ask for a restraining order only, or you can make other claims such as custody or child support.

You must provide an address on the application and other documents filed with the court. You should be aware that the person you are afraid of will receive a copy of these papers. If you don't want to use your own address, you can use another address. Just be sure that you can receive mail at this address. Be aware that you can't use a post office box because you need to be served with court documents.

If the person that you are seeking the restraining order against is also known by another name (an alias), then indicate the name that the person is commonly known as, include this name or any nicknames the person may have, in the section entitled "Full Legal Name", after the person's address. Make sure to indicate that they are aliases.

On the last page of the application form, you will need to show why the judge should include each term you have requested in the restraining order. For example, you may have asked the judge to order the other person to stay a certain distance away from specific places. For help in filling this out, you can consult the Restraining Order Tips Sheet at the end of this section. The Restraining Order Tips Sheet explains the limits you can ask the court to place on this person and other terms you may want to ask the judge to include. If the terms listed do not cover your situation properly, you can ask the judge to include other terms.

Be sure to include the reasons why you want this person kept away from these places. Or, you could ask that the other person not call you between certain hours and explain why. The judge will decide whether or not all the terms that you have requested will be part of the restraining order.

When you have completed the application, take it to the family court counter to be signed and dated by the clerk. Depending on the court you are in, court staff will provide you with a first court date.

Be sure to follow the instructions that appear on the application form. For more information about starting an application, refer to [A Guide to Procedures](#), Part 2: Applications. The guide is available at the family court office or on the Ministry of the Attorney General's website at <http://www.attorneygeneral.jus.gov.on.ca/english/family/guides-to-procedures>.

#### b) Completing a Canadian Police Information Centre Restraining Order Information Form

Family court staff will ask you to complete a Canadian Police Information Centre (CPIC) Restraining Order Information Form when you apply for a restraining order. If a restraining order is granted, this form is sent to the police, to show that a judge has ordered the restrained person to stay away from you and/or your children. A copy of the restraining order is also sent to the police with the CPIC form.

This form will ask for information about the person you are seeking the restraining order against, including their name. If the person is commonly known by another name that is not their legal name (i.e. an alias) or is commonly known by a nickname, indicate these other names on the CPIC form. This will help the police know that they have the right person if the person gets arrested.

### **Step 4: If you need an urgent order, complete and file motion materials with the application.**

If you are making a motion for an urgent order, you will need to complete the following forms as well as the application:

- a) [Form 14: Notice of Motion](#)
- b) [Form 14A: Affidavit \(General\)](#)
- c) a CPIC Restraining Order Information Form, which is only available at the family court counter
- d) [Form 14C: Confirmation](#) (not required for a motion without notice) – see Step 7.

#### a) How do I complete Form 14: Notice of Motion?

On the notice of motion you will tell the court what you are asking for. Staff at the family court office will give you a date for the motion to be heard.

On the form, there is a space for you to write the details of the restraining order you want the judge to make and why a temporary restraining order is needed. For help in filling this out,

you can consult the Restraining Order Tips Sheet at the end of this section. If the terms listed do not cover your situation properly, you can ask the judge to include other terms.

b) How do I complete Form 14A: Affidavit (General)?

The affidavit form is where you tell the court why you have reasonable grounds to fear for your safety and/or for the safety of your children.

In the affidavit you should set out the information that the judge will need to know about you and the person you are afraid of, including:

- The relationship between you and the other person (whether you are married, living together, separated or divorced);
- Whether you and the other person have children together and where the children are living;
- Any abuse that you and/or the children have experienced; and
- Why you are afraid for your safety and/or for the safety of your children.

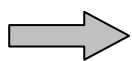
Be detailed in your explanation of why you are afraid of this person. If you can, include the following:

- Has the person made threats against you and/or the children?
- If the person has hurt you and/or the children, explain exactly how it happened;
- Are you afraid that the violence will happen again?
- Is there a history of violence or abuse?
- If there is a history of violence or abuse, is it getting worse?
- Has the person hurt or threatened others?

You should also explain why you want the judge to include the terms you have included in your notice of motion. For example, you may have asked the judge to order the other person to stay a certain distance away from specific places. In your affidavit, be sure to include the reasons why you want this person to be kept away from these places. The judge will decide whether or not all the terms that you have requested will be part of the temporary restraining order.

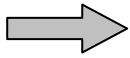
Try to include only facts that you know from your own experience. If you need to include information given by a friend, family member or someone else, you should name the person who gave you the information and state that you believe it to be true. Here is an example:

**The responding party's employer, John Doe, told me that the responding party started work at ABC Ltd. in November 2008. I believe this information to be true.**



*Keep in mind that the person you are seeking the restraining order against will read your affidavit.*

You must swear or affirm that the affidavit is true in front of a person who is a commissioner for taking affidavits. If you need help finding a commissioner for taking affidavits, staff at the family court house may be able to help.



*Remember, it is a criminal offence to swear a false or misleading affidavit. It is your responsibility to make sure that the information in your affidavit is correct.*

For more information about making a motion, refer to [A Guide to Procedures](#), Section 5: Motions. The guide is available at the family court office or on the Ministry of the Attorney General's website at <http://www.attorneygeneral.jus.gov.on.ca/english/family/guides-to-procedures>.

c) Completing the CPIC Restraining Order Information Form

Family court staff will ask you to complete a Canadian Police Information Centre (CPIC) Restraining Order Information Form when you file your notice of motion. If a temporary restraining order is granted, this form is sent to the police, to show that a judge has ordered the restrained person to stay away from you and/or your children. A copy of the restraining order is also sent to the police with the CPIC form.

**Step 5: If you don't have a lawyer, ask to have the documents served on (given to) the other person.**

A copy of all your court documents and any order made on a motion without notice must be served on (given to) the other person, along with a blank [Form 10: Answer](#) when they are served with an application. The other person will complete Form 10 to tell their side of the story. The court will keep the original documents. Be sure to keep a copy for yourself.

If you do not have a lawyer, ask staff at the family court office to arrange to have your documents served. This is a free service. If you have a lawyer, your lawyer will serve the documents for you.

It is important to develop a safety plan, and there are resources in the community to help you do that. See the Resources section at the end of this guide for more information.

**a) What happens if the person I am supposed to serve can't be found?**

If the person you are trying to serve can't be found or is trying to avoid being served, you can ask the court for an order for "substituted service". This means that you (or the person serving the documents) can leave the documents with another person (for example, the other person's parent) to bring to the person's attention. Or, the court may order that the person be served by placing an advertisement in the local newspaper.

## **Step 6: File proof at the family court counter that the documents have been served.**

Whoever serves the documents must complete [Form 6B: Affidavit of Service](#). This is proof to the court that the documents have been served on the other person. If the court arranges service for you, the court will also take care of this step free of charge.

### **a) What happens when the other person receives the documents?**

When the other person is served with an application, they may set out their response to the application in [Form 10: Answer](#) and file it with the court. In an answer, the other person can also ask the judge to make other orders in the case. The other person must serve you or your lawyer with a copy of their answer.

If there is a “first court date” on the application or on the hearing date set out on a notice of motion, the judge will expect you and the other person to be in court on that date. The date and time for your court date is set by the court.

If there is no first court date on the application, you or the other person must ask staff at the family court office for a case conference date. Ask your lawyer, the advice lawyer at the Family Law Information Centre or family court office staff about when a case conference, or an uncontested trial if no answer is filed, can be scheduled.

If at any time in this process you need an urgent order from the court, you can get an earlier date to go to court. See steps 3, 4 and 5 in the flowchart on page 3 for guidance.

If the other person is served with a copy of a temporary restraining order and motion documents filed on a motion without notice, the judge will expect you and the other person to be in court on the court date set out in the order.

If you are not asking for an urgent order, you will proceed directly to step 10.

## **Step 7: File the “Confirmation” form to say that you will be in court on the date of the hearing.**

Be sure to follow the instruction in the “Note to Person Making the Motion” that appears at the end of the notice of motion. To complete this step you will need [Form 14C: Confirmation](#). This confirms with the court that you will be attending court on the date and time of the hearing. If you do not file the confirmation, the court date may no longer be available for you.

If you are not proceeding on an urgent basis, you will need to either attend a first court date or a case conference as your first step, depending on which court you’re in. Case conferences also require that a Form 14C: Confirmation be filed. Follow the steps set out in the flowchart on page 3 and the Guides to Procedure at <http://www.attorneygeneral.jus.gov.on.ca/english/family/guides-to-procedures>.

## **Step 8: Be in court on your court date to explain your case.**

It is important to go to court on your court date. When your application or motion is heard, the judge will consider what you and the other person have written in your court documents and what you are asked to tell the court. The judge will make a decision based on the evidence. You will be called in to the courtroom to speak with the judge.

If you do not have a lawyer, it is a good idea to speak with duty counsel when you get to the court. Duty counsel are lawyers who are paid by Legal Aid Ontario to help people in family court. You may have to provide the duty counsel with some information to verify that you cannot afford to pay for a lawyer. See the Resources section at the end of this guide for more information.

If your motion was made without notice to the other person, the judge will have to decide whether to grant a temporary restraining order without hearing from the other person. If an order is granted, the judge will ask you both to come to court so that the other person can tell their side of the story. At that time, the judge will decide whether to continue the order.

A restraining order made on a motion is usually temporary<sup>1</sup>. The order may expire on a certain date or the order may include a date for the court to review its terms. At that time the judge might decide to continue the temporary order, make it final or let it end.

### **a) Will a judge always grant a restraining order?**

In some cases, the judge will not be able to grant a restraining order based on the evidence presented. Whether or not the judge grants a restraining order, it is important to protect the safety of yourself and your children. For a list of legal and crisis services or help with developing a safety plan, go to the Resources section at the end of this guide.

## **Step 9: If the judge has made the restraining order, ask family court staff for a copy of the restraining order.**

If the judge grants the restraining order, family court staff will prepare the order for you. They will do so even if you have a lawyer. You should not leave the court house until you receive a copy of the restraining order. Tell the staff at the family court counter that a restraining order was granted and you are waiting for a copy.



*Court staff will provide two certified copies of the restraining order at the time it is made, free of charge. However, if you lose your copies and need new copies,*

<sup>1</sup> In most cases, the parties to an application started at the family court have 365 days to complete that case. If a judge has not extended the timeline, the case will be dismissed automatically. This means that any temporary orders, including a restraining order, will end if the case is not completed. If you have a lawyer, your lawyer will be monitoring the timeline for you. If you do not have a lawyer and the timeline is about to expire, speak to the advice lawyer at the Family Law Information Centre at your local family court.  
FLR-A SG RO EN (September 1, 2009)

*you will be asked to pay \$1 per page for a copy or \$3.50 per page for a certified (official) copy.*

The restraining order that you receive on a motion will depend on whether you brought the motion with or without notice:

- If you brought a motion *with* notice, staff will prepare [Form 25F: Restraining Order](#).
- If you brought a motion *without* notice, staff will prepare [Form 25G: Restraining Order on Motion without Notice](#).

You can see samples of both orders at the end of this section of the guide.

If the order was made without notice, you will have to serve or arrange to have served the Application, temporary restraining order and any other materials on the other person and return to court as directed for further order. If you do not have a lawyer, ask staff at the family court office to arrange to have your documents served on the other person. This is a free service. If you have a lawyer, your lawyer will serve the documents for you.

You should keep a copy of the restraining order with you at all times. If you have children who are also protected by the restraining order, it is a good idea to give a copy of the order to the children's school or daycare. A copy could be useful if the person restrained disobeys any of the terms of the restraining order and the police are called. You, the school or the daycare staff could then show the police a copy of the restraining order. This will help the police decide if the person being restrained should be arrested.

Even if a judge makes a restraining order, it is important to also develop a safety plan to protect the safety of yourself and your children. For a list of legal and crisis services or help with developing a safety plan, go to the Resources section at the end of this guide.

**Step 10: Go to court as necessary to obtain a final order about all of the issues in your case.**

If the order you have obtained is temporary, you will have to go back to court to ask for a final restraining order and a final order regarding any other claims that you've made in your family case. To do that, you will have to follow the steps in a family case. For example, you will have to go to at least one case conference, a settlement conference and a trial. For more information about these steps, please see the Ministry's Guides to Procedure, available online at <http://www.attorneygeneral.jus.gov.on.ca/english/family/guides-to-procedures>.

# How to Apply for a Restraining Order

