

Legal Options for Protection from Domestic Violence and Stalking

Protection Orders

Getting protection from domestic violence and stalking is a complex issue, but there is legislation (The Domestic Violence and Stalking Act), to protect those who qualify. If you are in urgent need of protection for yourself and/or your children, you may apply for a Protection Order.

This fact sheet provides information to help you apply for a Protection Order.

Definitions:

Applicant - person applying for the order

Respondent - person you want to be protected from
Judicial Justice of the Peace (JJP) - the court official who will hear your case and make a decision based on the evidence presented

Protection Order Designate (POD) - a person specially trained to help people apply for Protection Orders (See contact number at the end of this sheet)

Domestic Violence – happens in close relationships ex: between married or common-law couples or between family members, where one person uses any form of violence or abuse to cause fear and gain control over the other person. Two people don't have to be living together; they can be living apart; have been in a dating relationship or have had a child together. Domestic violence includes:

- causing harm to a person or their property, or using threatening actions or behaviours that cause the person (victim) to fear being harmed or fear their property will be damaged
- emotional abuse
- forcing someone to remain against her/his will
- sexual abuse

Stalking – occurs when a person repeatedly harasses or bothers another person (victim) causing her/him to fear or be afraid for her/his safety. Stalking can include:

- following the victim from place to place
- communicating directly or indirectly with the victim. Making contact or trying to make contact with the victim face-to-face, on the phone, on the internet, by mail or by sending messages to the victim through other people.
- watching any place where the victim might be
- threatening acts directed at the victim

What is a Protection Order?

A Protection Order is a court order, granted on an urgent basis, forbidding the respondent from having contact with the applicant. These orders are granted by a JJP and can contain all or some of the specific conditions listed below:

- The respondent may not communicate with you or contact you directly or indirectly.
- The respondent may not come near any place that you or a specified person happen to be or regularly attend, such as your home, job, school, or place of worship.
- The respondent may not follow you or any specified person.
- The respondent must turn over any weapons to the police, and the police can search for and seize weapons.
- The respondent must give you temporary possession of your necessary personal belongings.
- You may have the help of a police officer to get your personal belongings.
- You may have the help of a police officer to remove the respondent from your home.

Protection Order conditions imposed under *The Domestic Violence and Stalking Act* as of October 17, 2010, may include an exception that allow a respondent to attend court or other court related proceedings when a protected person is present. Specific conditions related to this exception would apply, such as the respondent would have to stay at least two metres away from the protected person and not communicate with her/him unless the judge or mediator is present and approves communication.

Who can apply for a Protection Order?

You can apply for a Protection Order if someone has stalked you or subjected you to domestic violence and there is reason to believe that the behaviour will continue. You do not have to wait until you have actually been injured to seek help. As the applicant, you must explain to a JJP why you need the order and give facts, times, dates and locations of incidents that show why you urgently need protection. If your application is based on domestic violence, you must also show that:

- you are currently living with or dating the respondent or have done so in the past; or
- you have a child or children with the respondent; or
- you and the respondent are family members.

How much does it cost?

There is no charge for getting a Protection Order. However, there is a fee if you apply to have the Protection Order cancelled.

How do I get a Protection Order?

There are two ways to apply for a Protection Order – in person or by telephone.

To apply in person:

- Go to the Law Courts building nearest to you and ask for a hearing.
- Fill out the application and a fill-in-the-blank affidavit describing the stalking or domestic violence.
- Court staff will schedule the hearing for you and may recommend that you see a POD to help you with your application and provide information about safety planning.
- Go to the court room where your application will be heard. The JJP will either be in the room or in contact by video conference.
- The JJP will review your application, affidavit and any verbal evidence given, and make a decision.

You can bring a friend or a support person with you to court. It is best not to bring your children.

To apply by telephone:

- Go to a POD, lawyer or police officer and ask for help.
- Fill out an application and a fill-in-the-blank affidavit.
- The JJP will be called and you can give your evidence over the phone, as long as it is possible to tape record it.
- The JJP will review your application, affidavit and any verbal evidence, and make a decision.

You don't need witnesses or other people to give evidence when you're applying for a Protection Order, but they can do so if they have first-hand information about the facts.

How long does it take to apply for a Protection Order?

Completing the necessary documents and participating in the hearing before a JJP can take several hours. If the JJP finds you have sufficient evidence, you will be granted an order at the end of the hearing. The order goes into effect immediately, but the respondent will need to be served with the order before she/he can be criminally charged for breaching any of the conditions of the order. The conditions of the order will be entered into a computer registry that is available to all police agencies, so they can enforce the order if you call them for help.

How does the respondent know I have a Protection Order?

If a Protection Order is granted, the police or sheriff's office serve the respondent as soon as they are able. The respondent then has 20 days, or a longer period if a judge allows it, to apply to have the order set aside (cancelled).

Can the respondent stop the Protection Order?

If the respondent applies to the Court of King's Bench to have the order set aside (cancelled), you will be notified. The respondent will be allowed to see and listen to the evidence you gave in court. You will be given notice of the hearing and will have the opportunity to challenge the respondent's evidence and explain to the court why the order should stay in place.

How long is the order in effect?

Protection Orders made after October 31, 2005 are usually in effect for three years. However, the JJP can grant a longer order if she/he believes you need protection for a longer time. If you have a Protection Order that has expired or is about to expire and still need protection, you can apply to get a new one within three months of the expiry date. Protection Orders made **before** October 31, 2005 do not expire.

Does the order apply outside of Manitoba?

Some provinces, including Manitoba, have laws that recognize Protection Orders granted elsewhere. For more information, check with a lawyer or with the Family Law Branch, Manitoba Justice (204-945-0268 or toll-free 1-800-282-8069 ext. 0268).

Remember

- A Protection Order is not a guarantee of protection. No matter what court orders you get, you still need a safety plan.
- You need to get the order of protection that best fits your situation.
- Just because you ask for a Protection Order does not mean you will automatically get one.
- JJPs issue court orders based on case law, facts and evidence. You must be specific about the facts of your situation – dates, times, places.

Information

For more information on domestic violence or safety plans, call the provincial crisis/information line toll free at **1-877-977-0007**.

For more information about legal protection available through the courts and information about Protection Order Designates (POD), call Manitoba Justice Victim Services, **toll free at 1-866-484-2846**.