



All Women. One Family Law.  
Know your Rights.

**flew** Family Law  
Education for Women  
Women's Right to Know

**fodf** Femmes ontariennes et  
droit de la famille  
Le droit de savoir

# Criminal and Family Law

*This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, it is recommended that you get legal advice as soon as possible to understand your options and to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem". You may also want to view our webinars on "Looking for a Family Law Lawyer", "When Charges are Laid in a Domestic Dispute – What to Expect", and on other family law and related criminal law topics. All of these resources are on our website at [www.onefamilylaw.ca](http://www.onefamilylaw.ca).*

There are many kinds of violence against women. Violence includes abuse that is physical, sexual, emotional, psychological and financial. Abuse is when a person uses power and control over the victim. If you have experienced abuse, it is not your fault, and you did not cause it.

## **What kinds of abuse are crimes?**

In Canada, some kinds of abuse are against the law, including:

- Domestic or partner assault
- Sexual assault
- Stalking

Women are most often the victims of these crimes. The abuser is usually a person who the victim knows.

**A woman is at a greater risk of violence at the time of relationship breakdown and separation.**

**Assault** is when one person purposely applies force to another person, or attempts or threatens to apply force to another person, without permission. Assault is a crime, even if you are not physically hurt.

Assault can include:

- slapping
- shoving
- kicking
- punching
- stabbing
- throwing an object that could hurt or scare you.

**Domestic assault** is an assault that takes place between intimate partners, regardless of their sex, sexual orientation or gender identity. The partners do not have to be legally married or living together, as long as they are or were in an intimate relationship. Domestic assault is against the law.

Anyone can contact the police to report a possible domestic assault - you, your partner, your children, or other witnesses such as friends and neighbours.

**Sexual assault** is a sexual act or touch that you do not consent to. **Consent** means that you freely agree to the sexual act or touch. If you take part in sexual acts when you are seriously impaired by alcohol or drugs, or if you are asleep or unconscious, the law says you are not able to freely agree or consent.

Consent can be given through actions or words. The person who begins the sexual acts or touching has to take reasonable steps to make sure that the other person consents.

In Canada, your partner can be charged for sexually assaulting you, even if you are married. Sexual assault is a crime even if you are not physically hurt. Sexual assault can include:

- an unwanted kiss;
- an unwanted sexual touch;
- forced penetration;
- forcing you to do any sexual acts by using threats or saying that if you don't do it, something bad will happen to you or someone you care about.

Most sexual assaults are committed by someone the victim knows. If your intimate partner forces you to do any sexual act without your consent, it can be sexual assault.

**Stalking** is when a person you do not want to have contact with does things that scare you. Stalking is a crime even if your stalker does not hurt you physically. Stalking is against the law and is called **criminal harassment**. A person may be breaking the law by stalking you if the person:

- watches you and follows you;
- sends you gifts you do not want;
- damages or threatens to damage your property;
- contacts you or tries to contact you, and knows you do not want to be contacted;
- sends you lots of messages that you do not want;
- sends you unwanted messages through other people;
- threatens to hurt you or your family or your pet;
- does any of these things on the phone, in letters or notes, on the internet, or in person.

If you are being stalked, keep a journal of what the stalker does that scares you, and when and where it happened. This record can help you convince the police and the Court that the stalker is breaking the law.

## How the law can help

You and your children may be in a lot of danger from your partner right after you end the relationship. If you are thinking about leaving your abusive spouse or partner, there are steps you can take to help you stay safe. This may include talking to the police, a local women's organization or women's shelter and making a safety plan. There are also some ways that the law may be able to help you, as one part of a safety plan.

### 1. Involving the Police

If you are afraid and don't feel safe, if your partner has assaulted or threatened to assault you, or you have been sexually assaulted, you can call the police for help. Police forces in Canada will investigate and lay criminal charges if they believe there is enough evidence that a crime took place.

The person who says she or he was the victim of a crime and who makes a formal statement to the police (often called "laying a complaint") is called the "**complainant.**" The person who has been charged with committing a crime (also called a criminal offence) is called the "**accused.**"

### 2. Reporting Intimate Partner Violence

When police arrive at the scene of a problem between intimate partners, they must look at the situation and decide whether an assault probably happened, and who was the main aggressor, or attacker. If you talk to police, it is important to tell the truth.

In Ontario, if the police believe there is evidence that a person has assaulted their current or former intimate partner, police must lay a criminal charge, even if the

person who was assaulted does not want them to. This is called a **Mandatory Charging Policy**.

If the police believe that a woman has assaulted her partner, she may be charged. Sometimes, if it is not clear to the police who the main aggressor was, both partners may be charged. This is called **dual charging**.

Ontario has a special court program to deal with domestic assault charges, called the **Domestic Violence Court**. The government lawyer, called the **Crown Counsel**, and other court staff have special training to understand violence between intimate partners.

The Domestic Violence Court can deal with charges differently, if it is a first offence without a weapon or serious physical injuries. If the abuser admits to the assault and attends counselling to understand and end partner abuse, the abuser may not get a criminal record. This counselling program is called the **Partner Assault Response Program (PAR)**. If the accused doesn't finish the PAR program, and in other more serious cases, the Crown Counsel will ask to go to a trial.

### **3. Victim/Witness Assistance Program (V/WAP)**

If charges have been laid against your abuser, the Ontario Victim/Witness Assistance Program (V/WAP) can support victims and witnesses of domestic assault, sexual assault and criminal harassment (stalking).

V/WAP workers provide information at each step of the Court process and can help you prepare to give evidence if your case goes to a trial. The worker can also arrange for interpreters and help you find

community resources that offer you support. To find a program in your area, call the **Victim Support Line** at:

**416-314-2447** (Toronto)

**1-888-579-2888** (toll free)

#### **4. Know Your Abuser's Conditions of Release or Bail Conditions**

If your abuser is arrested and charged with domestic assault, sexual assault or criminal harassment (stalking), police may release the accused with conditions, or keep the accused in jail until a **Bail hearing**. **Bail** is the temporary release of the accused before trial. At the Bail hearing, the Court will decide if the accused should be held in jail or allowed out in the community on bail, until the trial ends.

An accused person who is released on bail can be out in the community until the case ends, but will have conditions, and may have strict rules to follow. These are called **Conditions of Release or Bail Conditions**. Some conditions that the accused is often ordered to follow are:

- must stay away from the victim (or stay away unless the victim agrees to contact);
- cannot talk, phone, text, email, send a message through other people or have any other contact with the victim;
- must be home by a certain time (called "curfew");
- must not use alcohol or drugs;
- must not own or have guns;
- must find another place to live.

Bail conditions might also limit the contact between the accused and his or her children.

If you are afraid of the accused, you can tell the police, Victim/Witness Assistance Worker, the Crown Counsel (government lawyer), or the Judge. The Court can put detailed conditions on the accused, or order the accused to go to jail until the end of the trial.

***a) How long do the conditions on the accused last?***

In most cases, the Court will order the Conditions of Release will apply until the criminal trial is over and all charges have been dealt with. If the Court is going to change the conditions before the trial is over, you should be notified first. If you have questions or concerns about the conditions ordered against your abuser, you should tell the police or the Victim/Witness Assistance Worker or the Crown Counsel.

***b) What if the conditions on the accused conflict with an order from Family Court?***

It is very common that the Criminal Court does not know about a Family Court case or Family Court Orders. A Family Court may have ordered that the other parent has the right to spend time with your children. In the criminal case, Conditions of Release could say that the accused who is the other parent must stay away from you and your children. When this happens, it is hard to know what to do. It is important to tell both Family Court and Criminal Court about the two cases. In the criminal case, you can tell the Victim/Witness Assistance worker, the Crown Counsel or the Judge about any orders from Family Court. You should also try to get legal advice as soon as possible to help with a solution.

***c) Will anyone watch the accused before the trial?***

The Court may also decide that someone must watch what the accused is doing when he or she has been released before trial. This person is called a **Surety** and is often someone the accused knows. The Surety may have to promise to pay a money deposit before the accused is released. The Surety must tell the police if the accused breaks any of the Conditions of Release. If you know your abuser has broken any of the conditions, you should tell the police or Victim/Witness Assistance Worker, or Crown Counsel. It is not necessary to tell the Surety.

***d) What happens if the accused does not follow the Conditions of Release?***

If you are afraid the accused may be planning to hurt you, tell the police right away. If an accused is out on bail and breaks any of the Conditions of Release, this is breaking a Court Order, and he or she may be charged with a new criminal offence.

The Court can decide that an accused person who keeps breaking the Conditions of Release should not be allowed to stay out in the community before trial. Bail can be taken away and the accused will be arrested and kept in jail until the trial.

***e) What Happens after the trial?***

If the accused is found not guilty, the person is free to return to the community without conditions. If the accused is found guilty, the Court can order different sentences, depending on the criminal offence. A person who is found guilty of a criminal offence is called "convicted". To find out what will happen after the accused is convicted, you should ask the Victim/Witness Assistance Worker or Crown Counsel.

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## **5. Getting a Court Order to Keep Your Abuser Away**

If you have been assaulted, threatened, stalked or frightened by someone, a Court can order that your abuser must stay away from you, if you have a good reason to be afraid that the person will hurt you or your children. **It is important to have a full safety plan as well as a Court Order.** You can ask a women’s shelter or women’s organization to help you make a safety plan. Two kinds of Court Orders you can also apply for are described below.

### **i) Peace Bonds – from a Criminal Court**

If you are afraid that someone will cause you, your partner, or your child personal injury, or will damage your property, you may be able to get a Peace Bond. A **Peace Bond** is also called a “**Surety or Recognizance to keep the peace**”. It is a Criminal Court Order that limits what your abuser can do, and can order your abuser to not have any contact with you, your family and your property. There does not have to be a criminal charge or a conviction against the person you are afraid of. A Peace Bond is not a criminal charge, but it is a crime if your abuser does not follow the Peace Bond.

#### ***a) How long does a Peace Bond last?***

A Peace Bond can be ordered for up to one year. If your abuser does not follow the Peace Bond, or if there is still a good reason to be afraid, you can apply for the Peace Bond to continue for a longer time.

#### ***b) How do I get a Peace Bond?***

To get a Peace Bond, go to the police or to your local courthouse and ask to talk to a **Justice of the Peace**

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**(JP)**. An advantage to talking to police first is that the police have information (that the JP does not have) about a person's previous criminal background.

It is important to know that the Court will tell your abuser that you have asked for a Peace Bond. **You should know that you may have to be in Court with your abuser**, to get a Peace Bond.

In Court, you will have to swear to tell the truth, and then tell the JP why you are afraid of your abuser, and what limits you want on your abuser to make you feel safe. Your abuser can accept the terms of the Peace Bond, or argue against it.

If the JP agrees you have a reason to be afraid of harm to you, your partner, your child or your property, the JP can:

- order a Peace Bond with the limits that the JP thinks are necessary for your safety;
- order your abuser to sign the Peace Bond; and,
- if your abuser does not sign, order your abuser to go to jail for up to a year.

It is important to take your Peace Bond to a police station and ask them to file it with the **Canadian Police Information Centre (CPIC)**. Then police can check CPIC to see that you have a Peace Bond, if your abuser does not follow the limits that have been ordered.

**You should know that a JP can deny your request for a Peace Bond, or order a Peace Bond against you or against both you and your abuser.** If the Court says you must sign a Peace Bond, ask to talk to a lawyer first, to make sure you understand what you can and cannot do.

## **ii) Restraining Orders – from a Family Court**

A Restraining Order is very much like a Peace Bond, but it is especially for situations of family abuse or violence. A **Restraining Order** is an Order you can get from a Family Court, if you have a good reason to be afraid for your safety or the safety of your children. You can apply for a Restraining Order against a person you are or were married to or a partner you are or were living with, even if you only lived together for a short time. If you already have a case in Family Court, you can ask for a Restraining Order in your claim. You can also ask for a Restraining Order without having any other family law or criminal case.

### ***a) How long will a Restraining Order last?***

The Court can order that a Restraining Order will last for a specific period of time or forever. It can be for as long as the Court thinks it is necessary to keep you safe.

### ***b) How do I get a Restraining Order?***

To apply for a Restraining Order in Ontario, you have to go to Family Court and fill out an application form. There are lawyers, law students and court staff in many courthouses who can help you with the form.

You can ask for a Restraining Order by itself, or as part of your case in Family Court that is dealing with other issues, such as child custody, child support, spousal support or divorce. Usually, both you and your abuser will be in Court to say whether you should get a Restraining Order. It can take several months to get a Restraining Order because Family Courts are very busy.

### ***c) Emergency situations***

In emergency situations, you can ask for an **urgent Restraining Order**. You can also ask the Court for

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a Restraining Order without telling your abuser first. This is called an **“ex parte” Order**. The Court may agree to these Restraining Orders for a short time, until your abuser has the chance to respond and then the Court makes a final decision. The rules for urgent and ex parte Orders are strict and it is a good idea to ask a lawyer for help.

### **iii) When you have a Peace Bond or Restraining Order – what to do in an emergency**

Once you have a Peace Bond or Restraining Order, you should keep a copy of it with you.

The limits that the Court can order in a Peace Bond or Restraining Order can be like the limits in Bail Conditions of Release, such as:

- no contact with you or your family, in any way;
- stay away from you, your home, workplace, school;
- no guns.

If your abuser does not follow any part of a Court Order, you can call the police and say you are reporting a breach of a Peace Bond or Restraining Order. Police can arrest and charge a person with breaching a Peace Bond or Restraining Order, which is a criminal offence.

## **6. Criminal Injuries Compensation Board**

The Criminal Injuries Compensation Board is a decision-making body that can give money to victims of certain kinds of violent crime, including domestic assault, sexual assault and stalking, to help them deal with the effects of the crime. The effects can be physical or psychological, and must be fairly serious. You can make a claim with the Board even if your abuser was not charged or convicted of a crime.

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The Board may award you money if the crime has caused you:

- to pay for medical treatment or counseling services;
- to pay for travel to get treatment or counseling;
- loss of income;
- pain and suffering.

You can apply to the Board by filling out an application form, online or in writing. You can get more information about the Board at [www.cicb.gov.on.ca](http://www.cicb.gov.on.ca) or by phone:

**416-326-2900** (Toronto)

**1-800-372-7463** (toll free)

The views expressed in these materials are the views of FLEW and do not necessarily reflect those of the Province.

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**There is a greater risk of violence when an intimate relationship is ending. If you are in immediate danger, call 911. If you or someone you know is at risk, visit the FLEW website for information on getting support.**

**If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.**

**You can find more information on how to access services in French on our website at [www.onefamilylaw.ca](http://www.onefamilylaw.ca) or [www.undroitdefamille.ca](http://www.undroitdefamille.ca).**

## Family Law Topics Available\*

1. Alternative Dispute Resolution and Family Law (ENG001)
2. Child Protection and Family Law (ENG 002)
3. Child Support (ENG 003)
- 4. Criminal and Family Law (ENG 004)**
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)
12. Spousal Support (ENG 012)

*\* This booklet is available in multiple formats. Please see [www.onefamilylaw.ca](http://www.onefamilylaw.ca) for more information. You can also find additional materials on the website to help you understand your family law rights.*

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