## QuickLaw answers your questions

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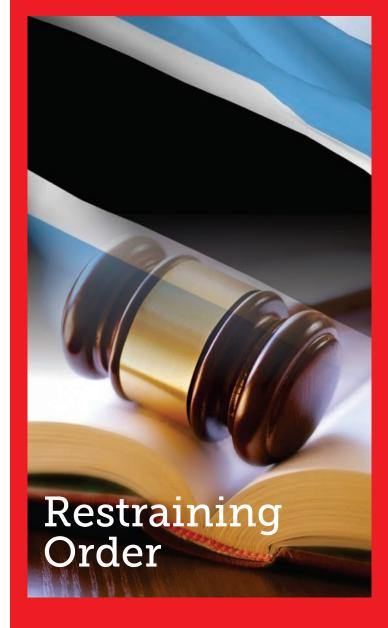
Updated May 2024

Domestic Violence

# **GET A LAWYER ON YOUR SIDE**

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QUICKLAW GUIDE

SADC BOTS QUIKLAW RESTRA



## What is a restraining order?

- > A restraining order or protective order is a legal order given by a court to protect a person in a situation often involving alleged domestic violence, child abuse, assault, harassment, stalking or sexual assault.
- > It typically prohibits the person named in the order (the respondent) from contacting, harassing, intimidating, or coming near the person who sought the order (the petitioner).

### Who can apply for a restraining order?

- > All members of the public are eligible to apply for a restraining order.
- > Any aggrieved party who feels there is a justifiable reason to issue restrain or block another party from being permitted to come in contact with them or harass them may apply to the Magistrates Court for a restraining order.

#### How do I obtain a restraining order?

- > Applicants must file an application to the clerk of their local Magistrate's Court.
- > After the application has been filed, it is allocated a case number. The matter is then assigned to a magistrate who will then allocate a date of hearing.
- > The Applicant then arranges service of the Application on the Respondent, and must then file an affidavit of service.
- > In cases of domestic violence, police officers may be asked to serve the restraining order to the other party.
- > The matter is then set for hearing. At the hearing, the magistrate listens to both sides of the story to make a ruling.

## What supporting documents are required?

- > A written/typed affidavit (The Founding Affidavit) requesting a restraining order and a description of the circumstances and reasons for the order. This affidavit must be commissioned at the nearest police station.
- > A notice of motion completed, describing the specific reliefs sought in the restraining order.
- > A Certificate of Urgency can be attached if the matter is particularly time-sensitive (e.g. cases of domestic or spousal abuse) to be processed faster. (NOTE: A certificate of urgency is a written document outlining the reason for treating the matter as urgent). This ensures the case is heard almost immediately.

## How long will this service take?

- > The processing of a restraining order application without a Certificate of Urgency typically takes about a week.
- > A restraining order application accompanied by a Certificate of Urgency typically takes one to two days.

#### Consequences of violating a restraining order

> If your abuser breaches, or breaks the conditions of the restraining order, the complainant/victim is obliged to go to the police station and open a criminal case. The complainant must file an affidavit and in an explicit manner and include all forms and dates of abuse in the affidavit.

#### How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest Branch.