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Restraining Order

QUICKLAW GUIDE



Restraining Order

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 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.