

Peace Bonds & Restraining Orders



Public Legal Education
and Information Service
of New Brunswick

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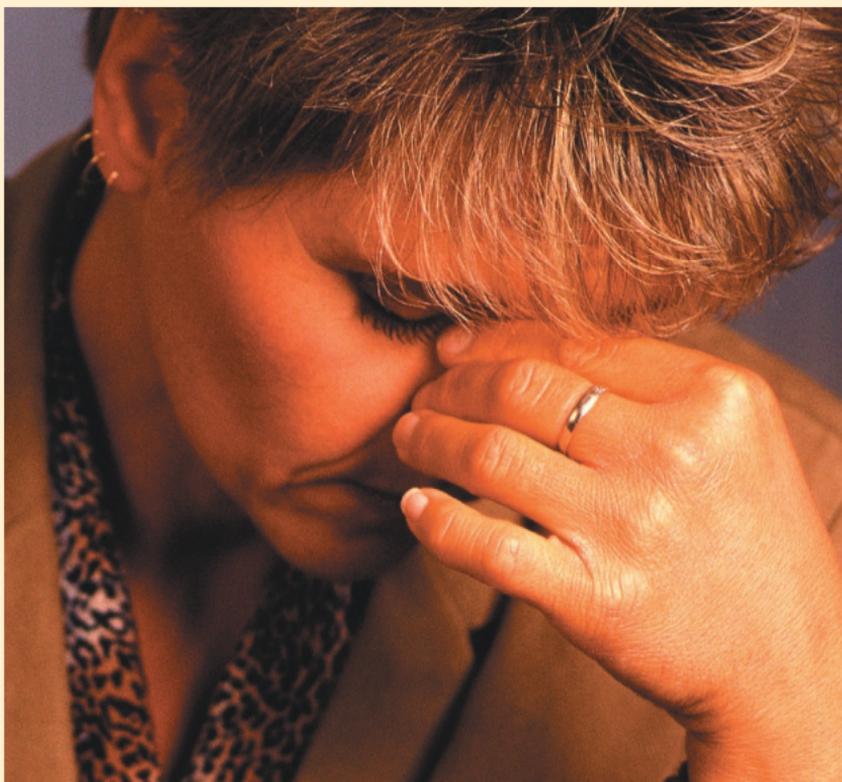
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Introduction

Peace Bonds and restraining orders are protection orders that a judge makes in court to help protect one person from another. Although both are based on an individual's fears or concerns about harm or harassment, people often confuse them. Understanding the difference may help you decide which order is most appropriate for you.

The purpose of the pamphlet is to explain the criteria for getting a peace bond or a restraining order, the difference between them, how you can apply for one, the conditions the court may impose on the other person to protect you, and the consequences of disobeying the order. If somebody has assaulted you or you are in immediate danger of being harmed by another person, you should contact the RCMP or your local police. Peace bonds and restraining orders are not a substitute for a charge. They are intended to prevent assault and harassment. It is important to remember, that this pamphlet does not contain a complete statement of the law in the area. Changes in the law may occur. Anyone needing specific advice on his or her own legal position should consult a lawyer.



Peace Bonds

What is a peace bond?

A peace bond is a protection order under the **Criminal Code** of Canada. The formal legal name is an “**810 recognizance**”. You can get a peace bond if you are afraid that another person will harm you, your partner (spouse or your common-law), your child, or damage your property. The other person could be anyone - a neighbour, an acquaintance or a family member. The peace bond is an order from the court, or an agreement that a person makes with the court, “to keep the peace and be of good behaviour”. That person is called the “**defendant.**” You can also ask that the peace bond set out other specific conditions.

What conditions can be in a peace bond?

To give a few examples, the defendant may agree or the court can order the defendant to:

- not visit you at home or at work;
- not call you on the phone;
- not write you letters or send you messages;
- not contact children, parents or other family members;
- not drive by your house;
- be prohibited from possessing firearms or ammunition.

It is a crime to break any of the conditions of the peace bond.

How do I get a peace bond?

Go to the nearest police or RCMP station. Tell the police why you want a peace bond. You must have a good reason to believe that you or your children might be harmed, or your property damaged. The police will ask you to give a statement in writing. Be as specific as possible about your fear. State what the other person is doing that frightens you and why. Be sure to mention any conditions that would make you feel safer.



Do I need a lawyer to get a peace bond?

No, you do not need a lawyer. A Crown prosecutor will receive your statement from the police. If it shows that you have reason to be afraid, the police will go before a Provincial Court judge to “**swear an information**”. Afterwards, the police will serve a **summons** or a **promise to appear** on the defendant. These documents will require the defendant to appear in Court on a specific date.

What happens next?

When the defendant goes to Court he or she can agree to sign the peace bond voluntarily. **You will not have to be there.** Court officials will notify you that the peace bond has been issued.

What if the defendant will not agree to sign the peace bond?

If the defendant will not agree to be bound by a peace bond, the judge must hold a hearing to decide whether to make an order for the peace bond. The Court will summons both you and the defendant to give evidence at the hearing.

What will happen at the court hearing?

The Crown prosecutor will ask you to take the stand. He or she will ask you questions about your fear for your safety under oath. The defendant will also have a chance to give evidence under oath. The defendant will explain why he or she does not agree with your reasons for feeling fearful. If the judge thinks you have a good reason to be afraid, she or he will issue the peace bond against the defendant. The judge will decide right away after listening to both sides. If the defendant does not show up, the judge can issue a warrant for his or her arrest. If the defendant refuses to sign the peace bond after it is ordered by a judge, he or she can go to jail for up to 12 months.

How long does it take to get a peace bond?

It can take a few months from when you first go to the police, until the peace bond is in place. The length of time depends on whether the defendant agrees to sign the peace bond or whether there will be Hearing. How soon the hearing happens depends on the court schedule in your area. The hearing for the peace bond usually happens anywhere from 4 to 8 weeks after you contact the police. If you have concerns about your safety while you are waiting for a peace bond be sure to have a safety plan in place. (See the pamphlet **Leaving Abuse: Tips for Your Safety**)

How much does it cost to get a peace bond?

Nothing. Peace bonds are free.

How long will the peace bond last?

The peace bond can last for up to one year. To get another peace bond after that year, you must have new evidence of your fear that the defendant will harm you, another family member or damage your property.



What is a “dual peace bond”?

Sometimes both parties claim that the other person is the aggressor, the one who should be keeping the peace. Although this is not common, the Courts will sometimes issue “dual” peace bonds, so that both of the parties are required to keep the peace and be of good behaviour to one another.

Do I get a copy of the peace bond?

You will not get one automatically. You must ask the court for a copy. It is a good idea to get a copy and carry it with you at all times. Give a copy to your local police or RCMP. If one of the conditions of the peace bond is the defendant not contact the children, be sure to give officials at the school or daycare a copy.



What if I move or leave the province?

Generally, the police can enforce peace bonds anywhere across New Brunswick and the rest of Canada. However, if you move or leave the province, you should carefully review the conditions of your peace bond. For example, the peace bond may restrict the defendant from coming within a certain distance of your home at a specific address. If you move to a new address, you may not have continued protection. If you are uncertain whether your peace bond will apply in your new location, consult your local police or the RCMP. The police and RCMP can only enforce the terms of a peace bond as written. If necessary, you may have to ask for a modification of the peace bond, which could involve another hearing.

Will the peace bond ensure my safety?

Peace bonds are not the perfect solution to ensuring safety. The thought of having a criminal record may deter many defendants. However, the defendant may decide not to obey it or to try to harm you while you are waiting for the peace bond. Because peace bonds are court orders, they do make it easier for police to make an arrest if the defendant breaks a condition of the peace bond. While not a guarantee of safety, having a safety plan or strategy for staying safe can help to increase your safety. (See the pamphlet **Leaving Abuse: Tips for You Safety**).

What should I do if the defendant breaks the conditions of the peace bond?

Call the police immediately. The police should lay charges because breaking a peace bond is a crime. The police can only enforce a peace bond if you let them know the defendant broke the conditions.

Will the defendant have a criminal record if I get the peace bond?

No, a peace bond is not a criminal charge. If the person named in the peace bond obeys all the conditions of the peace bond during its term, it will simply expire and nothing more will happen. But if the defendant breaks any condition of the peace bond, the police can charge him or her with a crime. If the court convicts a person of breaking the peace bond, he or she would have a criminal record. The person may get a fine, a jail term, or both.

Peace Bonds and Family Violence –

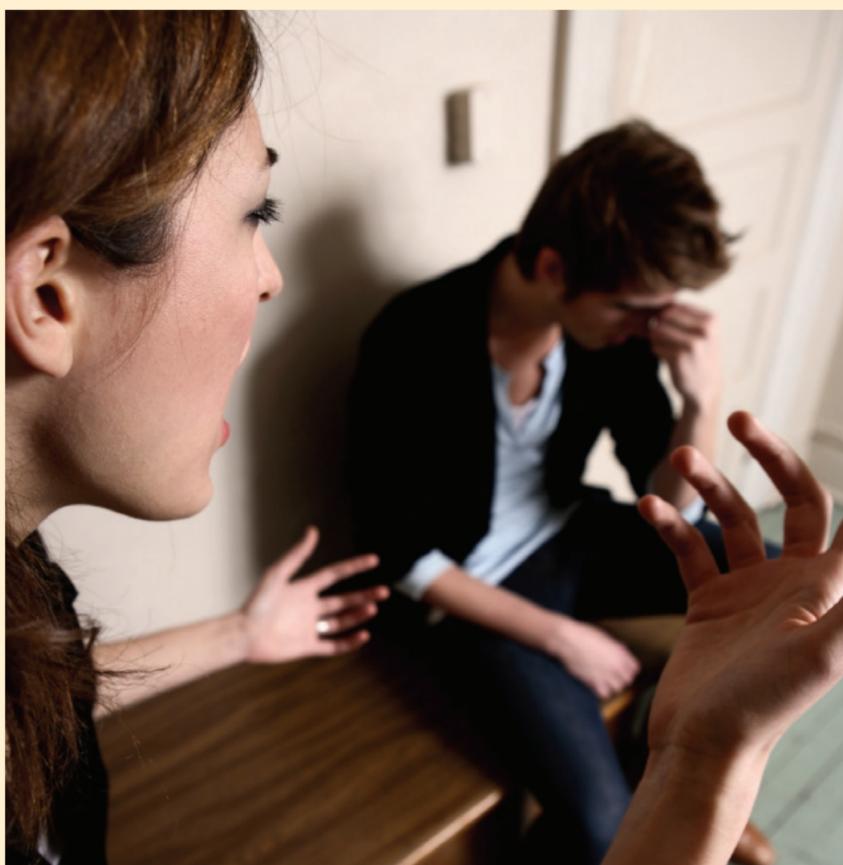
Some Common Questions

Can I get a peace bond against my spouse or common-law partner?

Yes. You can apply for a peace bond for protection from anyone, including your spouse, common-law partner, ex-partner or boyfriend/girlfriend.

What if I'm too frightened to ask for a peace bond against my partner?

If the police are aware of your fear and have concerns for your safety, they may apply for a peace bond on your behalf.



Can we keep on living together if I apply for a peace bond?

The judge may not issue a peace bond if a couple is still living together. If you continue to live with your spouse or common-law partner, it may be hard to prove that you fear for your safety.

If I get a peace bond against my ex-partner, can I stop him or her from seeing the children?

You may ask that one of the conditions of the peace bond be that the defendant not have contact the children. However, if you and the defendant have an existing custody order, a peace bond cannot restrict his or her right to see the children. Mention your custody order to the Crown prosecutor and discuss the possibility of obtaining a restraining order.

Child custody is a family law matter, so if you wish to change your custody order to prevent the other parent from seeing the children, you should seek legal advice. If you are a victim of domestic violence, the Domestic Legal Aid program may be able to help you.

Can I see the defendant after I get the peace bond?

If no contact is a condition of the peace bond, you should not contact the defendant. It is an offence for the defendant to see you. If you must talk to him or her, first ask the Crown prosecutor or the police to change the conditions of the peace bond. You should carefully weigh getting the conditions of the peace bond changed – remember, it was put in place to protect you.

Restraining Orders

What is a restraining order?

A restraining order is a protection order under the New Brunswick **Family Services Act**. It is a civil law order that is made in the New Brunswick Court of Queen's Bench. Although peace bonds, which are criminal law orders, may apply to anybody that you are afraid of, restraining orders must have a family connection. You can get a restraining, for example, as part of a custody order to stop the other person from interfering with you when he or she is exercising custody or visitation rights with the children.

Do I have to fear the other person to get a restraining order?

Not necessarily. You do not need to show fear of harm to get a restraining order. Although you may request one because you are fearful after separating from a spouse, you can also use a restraining order to stop the other person from continuously annoying you, for example, by calling you repeatedly.

Do I need a lawyer to get a restraining order?

To get a restraining order you will need to make an application to the court (civil court). You do not need a lawyer to make the application, but it is recommended. If you are a victim of domestic violence, or if you are making or changing an application for support, you may be eligible for legal assistance under the domestic legal aid program.



What should I do if the person breaks a condition of the restraining order?

The general procedure when somebody disobeys a condition of a restraining order is to go back to court and ask the court to find the person in contempt. This is a civil order. A person who is found in contempt by the Court may be fined and in some cases sent to jail. Unlike peace bonds which are under the **Criminal Code**, the police generally do not have the authority to enforce restraining orders. However, the police will deal with any behaviour that is of a criminal nature, such as threats to harm you or assaults. You may need to consider a peace bond.