

A GUIDE TO

Emergency Protection Orders

For Couples Living on Reserves in New Brunswick



This guide was produced by Public Legal Education and Information Service of New Brunswick (PLEIS-NB) in collaboration with the New Brunswick Department of Justice and the Office of the Attorney General. It does not contain a complete statement of the law in this area and laws change from time to time.

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You can find more general information on family law and family violence on reserve on **the Healing Journey website** (www.thehealingjourney.ca.)

Or check out www.legal-info-legale.nb.ca or www.familylawnb.ca.

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Introduction

On December 16, 2014, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* became a new law in Canada. This Guide refers to this Act as the “*Family Homes on Reserves Act*”. This federal Act addresses certain family law matters on First Nation reserves that are not covered by the *Indian Act*. It gives spouses who are legally married and common-law partners rights and solutions for the use, occupation and possession of the family home when a couple breaks up, or on the death of a spouse or a partner. It also provides for **Emergency Protection Orders** in situations of family violence.

The purpose of this Guide is to set out the steps to follow to get an **Emergency Protection Order**.

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Who the Act applies to

The *Family Homes on Reserves Act* applies to you if:

- You live on a First Nation reserve, *and*
- At least one of you is a member of a First Nation or a status Indian, *and*
- You are married, *or*
- You have been living with a common-law partner for at least a year.

In New Brunswick, all First Nation communities are governed by the *Family Homes on Reserves Act* until such time that they develop their own legislation.

If the Act applies to you, at the breakup of your relationship or the death of your partner, it can help you add your name to the **Certificate of Possession**, sell your interest in the family home, or split the value of that interest in the family home.

The *Family Homes on Reserves Act* says that when making decisions about who can stay in the family home it is important to take into account **the best interests of the child or children**. It is also important for the court to take into account the children's ability to keep their connection with the First Nation. However, it does not affect the ownership of the family home.

The *Family Homes on Reserves Act* treats spouses who are legally married and common-law partners the same, as well as former spouses and former common-law partners in certain sections.

In this Guide, we will refer to spouses, partners, former spouses and former common-law partners as "partners".

What if I am not a status Indian or First Nation?

Before the *Family Homes on Reserves Act* was a law, when a couple broke up or your partner died, a non-First Nation partner may not have been able to stay in the family home on reserve. For example, if only the father was a First Nation member, the mother and children would have to leave the family home at separation. Under the *Family Homes on Reserves Act* a partner may be able to stay in the home even if he or she is not a status Indian or a First Nation member.

December 16, 2014

The Family Homes on Reserves and Matrimonial Interests or Rights Act became a law in Canada.

For more information go to **Centre of Excellence for Matrimonial Real Property** at www.coemrp.ca.





Definition of Family Violence

Under the *Act*, family violence is defined as any of the following acts by one partner against the other partner, any child cared for by either of them, or any other person who usually lives in the family home:

- an intentional use of force without lawful authority or consent, excluding any act committed in self-defence; (ie. assault)
- an intentional or reckless act or omission that causes bodily harm or damage to property; (ie. doing something on purpose or neglecting to do something that will cause harm to someone or something)
- an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property; (ie. making you fearful that they may do something on purpose or neglect to do something that will cause harm to someone or something)
- sexual assault, sexual abuse or the threat of either;
- forcible confinement without lawful authority; (ie. stopping someone from leaving a place for a period of time, except when they are allowed to) or
- criminal harassment. (ie. stalking)



Purpose of Emergency Protection Orders

An **Emergency Protection Order** (“EPO”) is intended to address the safety concerns of the victims of family violence. If you are a victim of family violence living on reserve you can apply for an EPO in “Family Court”. You can ask that your partner be ordered to leave the family home on a reserve for up to **90 days** and maybe longer. Although there are other types of “no-contact” orders and conditions that may be ordered by the court in criminal matters, EPO’s apply directly to occupying and using a family home on a First Nation reserve.

During the period your partner is out of the home, you can explore options for dealing with family law issues, property division, support, and possibly finding a safe place to stay. You can also contact the police to ask for criminal charges to be laid against the partner.

Although most people follow court orders, they are not a guarantee of safety. Even if you get an Emergency Protection Order, you should be careful and make a **plan for your safety**.



Staying Safe

You can also call or go to a transition house to get advice, support and referrals. You may want to start your healing journey at Gignoo Transition House (www.gignoohouse.ca) which is a safe haven for First Nation women and children who are experiencing domestic abuse – 1-800-565-6878.

For a wealth of family violence resources and a *Directory of Services for Victims of Abuse*, go to the PLEIS-NB **Abuse and Violence** page. You can also check out the “Love Shouldn’t Hurt” campaign at www.gnb.ca/violence.





Who can apply for an Emergency Protection Order (EPO)

As a partner who is experiencing abuse, you can make the application to the Family Court for an EPO because of family violence by your partner against yourself, your children, or another person that usually lives in the family home. This application is called an “*ex parte application*” because it deals with an **emergency** situation. You do **not** have to tell your partner about it. The judge can hear the application and make an Order without the abusive partner being there, or even being aware that the application is being heard at the Family Court.

You can apply for an EPO even if you have already left your home due to family violence. When that happens, you may have a right to return to the family home even if you were the one to leave.

It is not required that you have a lawyer make the application for you. However, a family law lawyer is experienced in making applications to the court. If you cannot afford a lawyer, you may qualify for family legal aid.

If the custody or access of children is involved in the procedure Legal Aid may be able to help you. Contact the nearest Legal Aid Office to apply.



Bathurst	506-546-5010
Campbellton	506-753-6453
Edmundston	506-735-4213
Fredericton	506-444-2777
Miramichi	506-622-1061
Moncton	506-853-7300
Saint John	506-633-6030
Tracadie-Sheila	506-395-1507
Woodstock	506-328-8127

Be sure to tell them you need help applying for an EPO under the *Family Homes on Reserve Act*.

Other people can also apply on your behalf. For example, you can ask a police officer, nurse, counsellor, friend or other person to apply for an EPO on your behalf.

How do I apply for an EPO?

If you wish, you can make the application yourself, and you will be referred to as “self-represented”. [For information on “**How to Apply**”, see the Flow Chart on **Requesting an Emergency Protection Order** on page 4.] To access a fillable Application, an Affidavit, and a cover letter, go to www.FamilyLawNB.ca and under “Quick Links” click on “**Applying for an EPO on-reserve**”.





Flow Chart for Requesting an Emergency Protection Order*

Step 1

Does the *Act* apply to you?



Are you or your partner a First Nation member or status Indian?

NO

The *Act* **does not** apply to you

YES



Is the family home on a First Nation reserve?

NO

The *Act* **does not** apply to you

YES



Are you married or have you been living together for at least a year (common-law)?

NO

The *Act* **does not** apply to you

YES



Are you or a child or other vulnerable person in the family home a victim of family violence?

NO

The *Act* **does not** apply to you

YES

You can apply for an Emergency Protection Order

Step 2

Get the documents you need to apply for an Emergency Protection Order:

- **Notice of Application** (Form 73A)
- **Affidavit** in Support of an Application for an Emergency Protection Order

Get the forms at www.familylawnb.ca

Or, get paper copies at your nearest courthouse, Service New Brunswick, victim services, legal aid and other agencies.

Step 3

Fill out the **Notice of Application** (Form 73A)

Enter your name as the **Applicant** and your partner's name as the **Respondent**.

Enter your name, address and phone number in the blanks for the name and address of the Applicant at the bottom of the form.

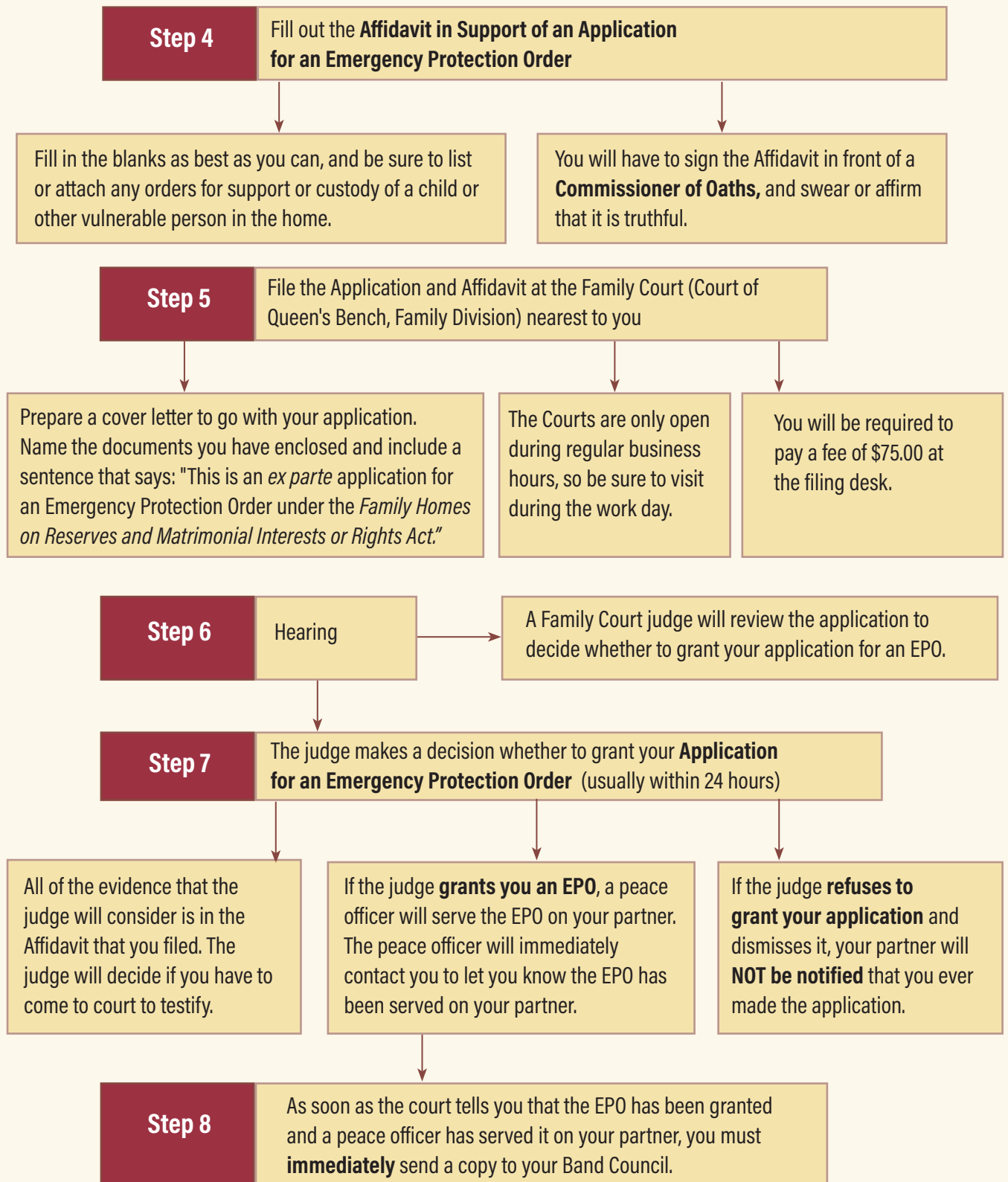
Enter your partner's name on the "TO:" line and in brackets write *ex parte*.

Where it states "On the hearing of this application, the applicant intends to apply for an order that" write in "that an Emergency Protection Order be granted under s.16(1) of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*."

*This guide is for people living on reserve in New Brunswick, if you live on reserve in another province you should check the rules for that province.



Flow Chart for Requesting an Emergency Protection Order





What the judge considers in making an Order

The judge will grant an EPO against a partner where he or she finds that there has been family violence and that a partner, child or other vulnerable person who usually lives in the family home is at serious risk of being harmed.

The judge can make an EPO even if the partner has not been charged with a domestic violence related criminal offence, or charges have been dropped or dismissed. The court can also make an Order if your partner has already been convicted. The information in your Affidavit should provide the judge with all the facts needed to make a decision. If the judge is satisfied that family violence has occurred and the situation is urgent to protect a person, child or family home property, the judge may grant an EPO that lasts up to 90 days. However, it does not affect the ownership of the family home. The person who applied for the Order can reapply to the family court to have the EPO last longer than 90 days.

The *Family Homes on Reserves Act* says that when making decisions about who can stay in the family home, the judge must consider the best interests of the child or children. It is also important for the court to take into account the children's ability to keep their connection with the First Nation.

The judge will also consider whether there has been family violence before, how long you have lived on the reserve, the interests of any elderly person living in the family home if you or your partner is their caregiver, or whether another person needs to be removed as well as the abusive partner in order to grant exclusive possession of the family home.



Conditions the judge can include in the Order

To help keep you safe, the judge can order the following:

- Allow you to be in the family home without the partner;
- Order the partner who has been abusing you leave the family home immediately or within a specified period, and stopping him/her from re-entering the home;
- Have a peace officer remove the partner from the family home;
- Stop the partner from being near the family home or using family property;
- Have a peace officer escort the partner to the family home or other location and supervise the partner removing their personal belongings; *and*
- Any other order that the designated judge considers necessary for the immediate protection of the partner or family home property at serious risk of being harmed.

Check out the:

Directory of Services for Victims of Abuse living on First Nations Reserves





After the court decides

If an order is granted, a peace officer must serve the order on your abusive partner and tell you as soon as the order has been served. Once the peace officer serves the partner, he or she **MUST** follow the Order and all the conditions in the Order.

What are my responsibilities after I receive the EPO?

Immediately after you receive the EPO, it is your responsibility to send a copy of the EPO to the First Nation council where the family home is.

If you or your partner leased the family home, you still have to follow the lease even if your name is not on it.

What if my partner refuses to follow the EPO?

If the abusive partner does not follow the EPO, call the police and tell them you have an EPO that says your partner has to stay away from the family home. If your partner is still in the home, the police can remove him or her. The police will then investigate and can lay charges which may result in a fine, a jail term or both.

**If your partner is still in the home,
the police can remove him or her.**

What happens after the 90 days?

The Order would no longer be in force. Hopefully, you had enough time to make arrangements to deal with your separation. However, you can also reapply to ask that your EPO last longer than **90 days**.

Although not dealt with in this Guide, the *Family Homes on Reserves Act* also sets out the procedure to get an **Exclusive Occupation Order**. You may wish to apply for this type of Order.

What if I change my mind?

If you change your mind, and want to allow the abusive partner to come back to the family home, you or your partner will have to apply to the court within **21 days of the date the Order was made by the court**, or when the abusive partner received it. However, you can apply to the court to change the Order any time there has been a material change in your circumstances since the EPO was granted.

What if the court does not grant me the EPO?

If the court does not grant you an EPO, your partner need not know that you applied for one. You can request that the Court keep the record of your application confidential. You may have to consider other legal remedies. For example, if you are fearful for your safety, you can ask a judge in Provincial Court for a Peace Bond against your partner. You may also find some civil remedies for dealing with family violence under the provincial *Intimate Partner Violence Intervention Act*.





Family Court Locations

Judicial District of Bathurst (Gloucester County)

Bathurst Courthouse
254 St. Patrick Street, P.O. Box 5001
Bathurst NB E2A 3Z9
Family Division: (506) 547-2152
Fax: (506) 547-2966

Judicial District of Miramichi (Northumberland County)

Miramichi Law Courts
673 King George Highway
Miramichi NB E1V 1N6
General Information: (506) 627-4023
Fax: (506) 627-4069

Judicial District of Campbellton (Restigouche County)

City Centre Mall, Suite 202
157 Water Street, P.O. Box 5001
Campbellton NB E3N 3H5
General Information: (506) 789-2364
Fax: (506) 789-2062

Judicial District of Moncton (Counties of Albert, Westmorland, and Kent)

Palais de Justice Moncton Law Courts
145 Assumption Blvd., P.O. Box 5001
Moncton NB E1C 8R3
General Information: (506) 856-2304
Fax: (506) 856-2951

Judicial District of Edmundston (Madawaska County, the Parish of Drummond, and the Town of Grand Falls)

Carrefour Assomption
121 rue de l'Église / Church Street, P.O. Box 5001
Edmundston NB E3V 1J9
General Information: (506) 735-2028
Fax: (506) 737-4419

Judicial District of Saint John (Counties of Charlotte, Kings, and Saint John)

Saint John Law Courts
10 Peel Plaza, P.O. Box 5001
Saint John NB E2L 3G6
Trial Division: (506) 658-2560
Family Division: (506) 658-2400

Judicial District of Fredericton (Counties of York, Sunbury, and Queens)

Justice Building
427 Queen Street, P.O. Box 6000
Fredericton NB E3B 5H1
General Information: (506) 453-2015
Fax: (506) 444-5675

Judicial District of Woodstock (Carleton County and Victoria County, excluding the Parish of Drummond and the Town of Grand Falls)

Woodstock Court House
689 Main Street, P.O. Box 5001
Woodstock NB E7M 5C6
General Information: (506) 325-4414
Fax: (506) 325-4484

