

Peace Bonds and Protective Orders



Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit charitable organization. Its goal is to provide the public with information about the law. PLEIS-NB receives funding and in-kind support from the federal Department of Justice, the New Brunswick Law Foundation and the New Brunswick Department of Justice and Public Safety.

This booklet does not contain a complete statement of the law in this area and laws change from time to time. Anyone needing advice on their specific legal position should consult a lawyer.



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.

CALL 911 IN AN EMERGENCY

Peace bonds and protective orders are **not a substitute for a charge**. They are intended to **prevent assault and harassment**.

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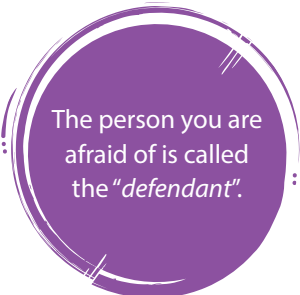
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A. Peace Bonds

A peace bond is a criminal court order under section 810 of the *Criminal Code*. It is intended to prevent one person from harming another.

You can also ask that the peace bond set out other specific conditions.



The person you are afraid of is called the “defendant”.

What conditions can be in a peace bond?

Here are a few examples of conditions the defendant may be required to follow:

- 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;
- not possess firearms or ammunition,
- keep the peace and be of good behaviour,
- not use non-prescription drugs or alcohol,
- other conditions a court thinks is necessary to prevent harm.

When can I apply for a peace bond?

You can apply for a peace bond for protection against anyone you are afraid will harm you, your family, or your property. The defendant could be your neighbour, an acquaintance, or a family member. The defendant may agree, or be ordered by the court, “to keep the peace and be of good behaviour”.

Can I get a peace bond against my intimate partner?

Yes. You can get a peace bond against an intimate partner such as a spouse, common-law partner, boyfriend/girlfriend or an ex-partner. In the case of intimate partner violence, you may also apply for an **Emergency Intervention Order** (see page 11) or an **Emergency Protection Order** (see page 14) which are civil protection orders.

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.

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 them from seeing the children?

You may ask that one of the conditions of the peace bond be that the defendant not have contact with the children. If a provision of the peace bond restricts someone from contacting their children for a certain period of time, then they must follow that restriction.

Once the peace bond ends, the person cannot be restricted from seeing their children unless a parenting order or agreement says otherwise. Mention your parenting order to the Crown prosecutor. You may need to consider filing an application or a motion to request a parenting order, or to vary an existing one.

Can a peace bond give me sole decision-making responsibility and parenting time of the children?

A parenting order is a family law order granted by the Court of King's Bench. You cannot apply or be granted a parenting order through a peace bond because that is an order granted through the criminal procedures in the Provincial Court.

If you are experiencing intimate partner violence and wish to get temporary sole parenting to prevent the other parent from seeing the children, consider applying for an [Emergency Intervention Order](#).

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 them, first ask the Crown prosecutor or the police about how 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.



It is a crime to break any of the conditions of the peace bond. If the defendant breaks a peace bond, they may be charged for doing so.

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 they can agree to sign the peace bond voluntarily. **As the applicant, 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 the applicant 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. They 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 they do not agree with your reasons for feeling fearful. If the judge thinks you have a good reason to be afraid, they 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 their arrest. If the defendant refuses to sign the peace bond after it is ordered by a judge, they can go to jail for up to 12 months for their refusal. (See section 810 (3.1) of the *Criminal Code*)

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 a 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.

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, a family member, or damage your property.

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.

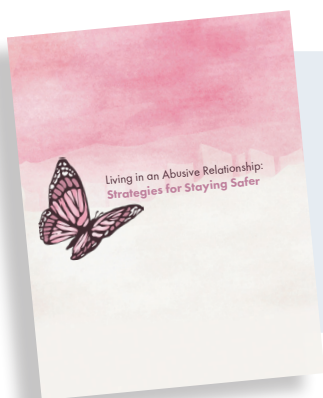
What if I move or leave the province?

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.

Remember, peace bonds are not a guarantee of safety, so having a safety plan or strategy for staying safe can help to increase your safety.



Check out the safety plans on the PLEIS-NB website at:

www.legal-info-legale.nb.ca/en/safety-planning.

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 them with a crime. If the court convicts a person of breaking the peace bond, they would have a criminal record. The person may get a fine, a jail term, or both.

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.

B. Civil Protective Orders

i. Restraining Orders – under the *Family Law Act*

A **restraining order** is a protection order under the New Brunswick *Family Law Act*. It is a family law order that is made in the Court of King's Bench – Family Division. Unlike a peace bond that may apply to anybody you are afraid of, restraining orders must have a family connection. When you are asking for an order against someone else, you are called "the Applicant". The person you want an order against is called the "Respondent".

There are three types of orders available. These orders can only be made when you are also making an Application or a Motion under the *Family Law Act*. This means you are applying to the court for parenting, support, contact, or you are making a motion to enforce one of those orders.

- **Under Subsection 81 (1)(a) of the *Family Law Act*:** A court can restrict the respondent from "molesting, annoying, harassing, or interfering with the applicant or any children under the lawful care and supervision of the applicant..."
- **Under Subsection 81 (1) (b) of the *Family Law Act*:** A court can order that a person refrain from contacting or interfering with the child, and any person who has a parenting order or contact order concerning that child.
- **Under Subsection 81 (1) (c) of the *Family Law Act*:** A court can also prohibit a person from entering premises where the child lives, even if that person owns or has a right to that property.

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 under the *Family Law Act*. 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.

How do I get a restraining order?

To get a restraining order you will need to make an application to the Court of King's Bench– Family Division. You do not need a lawyer to make the application, but it usually a good idea to get legal advice before proceeding.

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 assaults or threats to harm you. You may need to consider a peace bond or an **Emergency Intervention Order**.

ii. Emergency Intervention Orders (EIO)

An **Emergency Intervention Order (EIO)** is an order under the *Intimate Partner Violence Intervention Act*. These orders are civil remedies that are granted on application of individuals experiencing abuse or violence in an “intimate personal relationship”. The *Act* defines an intimate personal relationship as:

- individuals who are, or have been, married to each other;
- individuals who are, or have been, in a common-law relationship with one another; or
- individuals who are, or have been, in a dating or romantic relationship with each other even if they have never lived together.

What conditions may be in the Emergency Intervention Order?

The order may contain a variety of temporary conditions to enhance the safety of victims, such as:

- no contact;
- temporary sole care of the children;
- temporary occupation of the family residence (apartment, house, mobile home, etc.) while the partner (respondent) must move out; and
- removal of weapons or firearms from the respondent.

These orders are intended for situations where intimate partner violence has occurred or is likely to occur, and the situation is serious enough to require an immediate response.

For more information about what conditions can be included in an EIO, see our booklet **[Emergency Intervention Orders](#)**.

How long can an Emergency Intervention order last?

These orders may last up to 180 days and could be ordered for less time. They can be extended again by up to 180 days by applying to the court.

Since these orders are temporary, once an EIO is in place you may also wish to seek legal advice about beginning court proceedings to deal with long-term matters like a parenting order.

What if either of us want to change or end the conditions of the EIO?

If either of the parties wish to end or change (vary) the order, they can apply to do so within 21 days of the order being served on the respondent. Or they can apply at any time if there has been a material change in circumstances.

For information about varying an EIO, see our booklet [Emergency Intervention Orders: Information for Respondents](#).

How do I apply for an EIO?

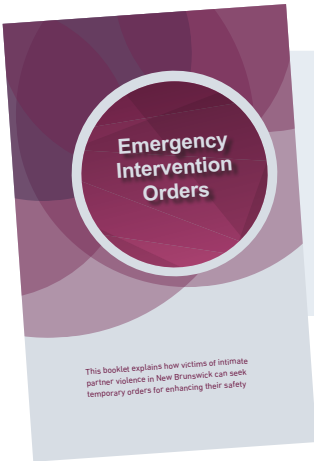
You must contact one of the following service providers to assist you with the application:

- police officers,
- victim services (both provincial Victim Services and police based victim/witness programs can assist their clients),
- transition houses,
- second stage housing,
- domestic violence outreach workers, or
- Department of Social Development social workers can assist their clients.

What if my partner breaks the conditions of the EIO?

EIOs are civil remedies so the violation of an order does not result in a criminal record. Still, breaking the conditions set out in the order is serious. Penalties for violating an order may include fines between \$500 and \$200,000. In some circumstances it may lead to jail time.

To enforce an EIO the applicant can call the police. The police can remove the respondent from the residence if there is an exclusive occupation provision. The police can also arrest the respondent without a warrant for breaching the order.



For more information on these protective orders, see the publication called [Emergency Intervention Orders](#).

iii. Emergency Protection Orders (EPO) – for couples living on reserve

Emergency Protection Orders are civil remedies that are made under the [Family Homes on Reserves and Matrimonial Interests or Rights Act](#). This federal Act gives legally married or common law partners living on a First Nation reserve rights and solutions for the use, occupation and possession of the family home if they break up, or if their spouse or partner dies. It also provides for Emergency Protection Orders in situations of family violence. Partner is defined as a common-law partner you have been living with on reserve for at least a year.

What conditions can be included in an Emergency Protection Order?

You can ask that the **Emergency Protection Order** include a provision that orders your partner to leave the family home on a reserve for up to 90 days. This order can be extended. 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 your 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.

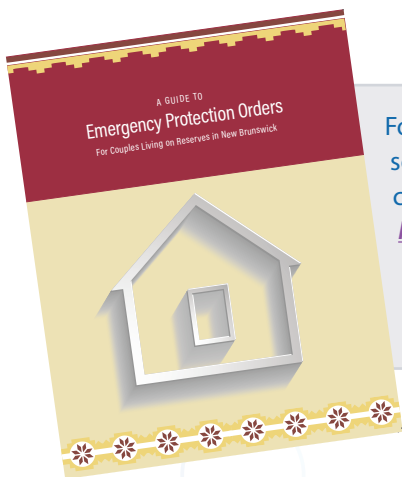
How do I apply for an EPO?

If the Act applies to you, you can apply to the Court of King's Bench by way of Notice of Application and a supporting Affidavit. Your local courthouse may be able to provide you with the Notice of Application required with a template Affidavit. For more information, see our publication on [Emergency Protection Orders](#).

You can also contact the **Family Law Information Line** at 1-888-236-2444.

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 them. The police may then investigate and can lay charges, which may result in a fine, a jail term or both.



For more information see the publication called [Emergency Protection Orders for Couples Living on Reserve](#).

C. No Contact Orders – under the Criminal Code

No contact orders can be issued for any crime where a victim or witness is involved. The order would state that the accused persons and offenders not communicate with the victim or go see the victim. This means that the person is not allowed to contact the victim by any means. The person is also not allowed to communicate with the victim indirectly by asking someone to pass along a message, unless the court has allowed for a third party to communicate on specific issues (for example: scheduling parenting time). A no contact condition can require the accused person or offender to stay away from certain places, such as the victim's home, neighborhood, or workplace.

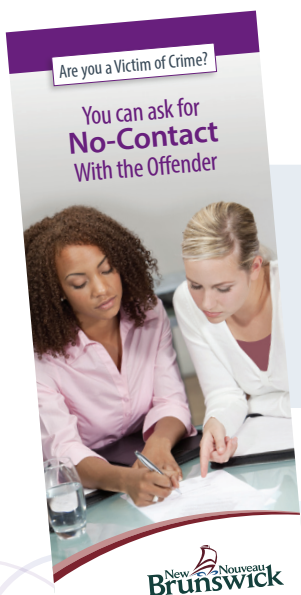
How do I get a no contact order?

No contact conditions can happen at various times. The police might include no contact as a condition of an accused person's promise to appear in court. No contact might be a condition on a bail order or probation. For certain offences, the Crown prosecutor will automatically ask for a no contact order, even if the victim has not. In some circumstances the judge is required by law to impose no contact provisions. It is important for victims who want no contact conditions in place to tell the police or the Crown prosecutor. The information will be put into the police file. There are various times throughout the criminal justice process that no contact conditions can be made.

What should I do if the accused breaks a no contact condition?

If a person breaks a no contact condition, you should call the police immediately. You should also give the police anything that might help to prove that the condition was broken – for example, a text message or e-mail received by the victim. The consequence of breaking a no contact condition will depend on when in the criminal justice process it was made and by whom.

Only a court can remove a no contact order. However, no contact can sometimes be varied. You should talk to victim services or the Crown prosecutor about this.



For more information, see the publication *Are you a Victim of Crime? You can ask for No-Contact with the Offender.*