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Women's Right to Know

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droit de la famille
Le droit de la femme à savoir

Staying Home Safely After Abuse: Court Orders that can help

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www.onefamilylaw.ca

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METRAC

METRAC, Action on Violence

- works to prevent violence against women and youth
- a not-for-profit, community-based organization

www.metrac.org

METRAC's Community Justice Program

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

www.owjn.org

FLEW, Family Law Education for Women in Ontario

- provides information on women's rights and options under Ontario family law and other relevant laws when families break down
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca

www.undroitdefamille.ca

Presenters

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Topics to be Covered

1. Introduction – the family home
2. The “matrimonial home” under family law
3. The right to live in the family home
4. Court Orders against abusive partners
 - a) Exclusive Possession Orders
 - b) Restraining Orders
 - c) Bail Conditions
 - d) Peace Bonds
 - e) Probation Orders/PAR Program
5. Additional Resources

Accurate as of the date of this webinar presentation, August 22, 2016



Introduction

Introduction

- Think of the importance of your family home
- Your home is where you:
 - eat, rest, sleep, entertain
 - keep important belongings
 - raise children, care for family and friends
 - have a base for work and school
 - may be part of a community
 - may have emotional ties or memories
 - may have financial security and it may be part of your financial planning

The Importance of a Safe Home

- An abusive partner can put your safety and feelings of safety at home at risk
- Abuse can be:
 - physical, sexual
 - emotional
 - psychological
 - financial
- Whether or not you are married
- Whether or not you are living together

The Importance of Safety First

- If your partner is abusive, it is important to have a **safety plan**

www.attorneygeneral.jus.gov.on.ca/english/family/violence.php

- **No Court Order is a guarantee that you will be safe**
- If your partner knows where you live, and staying in your home could be unsafe for you or your children, a Court Order that keeps your partner away from your home may not be the best option for you

Court Orders

- Some Court Orders can be part of your safety plan
- Different Court Orders can:
 - help you stay or return home, and
 - force your abusive partner to move out and/or stay away from you and your home



The “Matrimonial Home” under family law

The Matrimonial Home

- In Ontario, if you are married, the family home is called the “matrimonial home” under family law
- The “matrimonial home” is any home that you and your partner usually live in or lived in together
 - owned or rented

Ontario *Family Law Act*, s. 18

The “Matrimonial Home”

- The “**matrimonial home**”:
 - can be owned or rented, by one or both spouses
 - does not matter which spouse has name on the legal title or lease
 - is where the couple and their family is ordinarily living or where they ordinarily lived when they separated, and
 - is located in Ontario

Matrimonial Home – Special Rules

There are special rules that give you rights associated with the matrimonial home

1. For division of family property

- value of the matrimonial home at the date of separation must be included in the calculation to equally share family property

See webinar: *Property Rights and Obligations of Married and Co-habiting Partners* <http://www.onefamilylaw.ca/en/webinar/#property>

2. For sale or rental

- both spouses must agree to the sale or rental of the matrimonial home, or by Court Order

Legal Right to Stay in the Matrimonial Home

Special Rules for the Matrimonial Home

3. Right to live in the matrimonial home

- called the right of “**possession**”
- both spouses have the right to live in the matrimonial home
- it does not matter who bought the house, or which spouse has their name on the legal title
- cannot stop a spouse from entering or living in the home
- unless an agreement or Court Order says otherwise



The Right to Live in the Family Home

Right to Live in the Family Home

- both **married spouses** have the right to live in the matrimonial home
 - owned
 - rented, if both spouses have signed the lease
- for **unmarried partners** living together
 - the home **owner** can tell the other to leave and change the locks
 - if renting
 - when **both partners sign the lease**, both partners have the right to live in the home
 - when only **one partner is on the lease**, that person can tell the other to leave

The Family Home and Partner Abuse

- When there is violence or abuse between partners, there are different legal options:
 - that give you the right to stay or return to the home
 - that can force the abusive partner to leave and stay away from the family home
 - for married spouses and/or unmarried partners
 - for homes that are owned and rented

Rented Homes and Partner Abuse

- New law for tenants affected by abuse or violence
 - in effect September 2016
- Tenant can break lease and leave early (before the end of the lease)
- Tenant does not need other tenants to agree
- Must give 28 days notice to landlord
- Landlord cannot tell anyone about the notice to leave, or show the space before the tenant leaves at end of notice

Rented Homes and Partner Abuse

- Tenant or child living with the tenant has experienced abuse or violence
- Abuse/violence committed by:
 - spouse or former spouse
 - intimate partner or former intimate partner
 - relative living in the rented home
- Can prove abuse or violence by:
 - signing a statement that tenant or child experienced abuse or violence, or
 - showing a Restraining Order or Peace Bond (within 90 days of order)



Court Orders Against Abusive Partners



Exclusive Possession Orders

Court Orders Against Abusive Partners

1. **Exclusive Possession Order**

- couples must be legally married, includes same sex spouses and all gender identities
- does not matter which spouse owns the home
- gives one spouse the right to live in the matrimonial home, and forces the other to leave
- usually for a set amount of time
- can be combined with an order that your spouse cannot contact you directly or indirectly
- does not affect ownership of the home, or right of both spouses to share the value of the matrimonial home

Exclusive Possession Order

The Court **may** also order:

- the contents of house must stay
- the contents of house may be removed
- spouse who stays in home must maintain home and payments
- spouse who stays in home must make payments to the other spouse
- spouse who stays in home must receive payments from the other spouse to maintain the home

Exclusive Possession Order

- If your spouse does not follow the Order, that is a **criminal offence**
- Keep a copy of your Exclusive Possession Order to show police
- Police can arrest and charge a person if they believe on reasonable and probable grounds the Order was not followed
- Possible fine and/or jail term if found guilty

Ontario *Family Law Act* s. 24 (5), (6)

Exclusive Possession Order

- Very helpful to talk to a lawyer about your options
- You or your lawyer must file an application in **Superior Court** for an Exclusive Possession Order
- You can apply if you are currently living in the family home or outside of it
- The person asking for an Exclusive Possession Order must prove to the Court that the order is necessary

Exclusive Possession Order

- Your spouse will get notice of your application
- You and your spouse may attend Court together
- In potentially dangerous situations, you can ask the Court for a temporary order before giving notice to your spouse.
 - called an “*ex parte*” order (“without notice”)
- Very helpful to talk to a lawyer about your options

Exclusive Possession Order

Before making an Order for Exclusive Possession, the Court will consider:

- the best interests of any children involved
- any violence by one spouse against the other spouse or the children
- availability of other places either of the spouses could live
- the financial situation of both spouses
- a separation agreement or other written agreement between you and your spouse

Exclusive Possession Order

- Best interests of children is a **very important** factor to the Court
- Court must consider:
 - effects of moving and disruption in a child's life
 - a child's views and preferences
- Orders for exclusive possession of the family home are more likely to be granted if you have children

Exclusive Possession Order

- A violent partner is an **important factor** to the Court
- Violence includes physical, sexual, emotional, psychological harm
- The person who says there is abuse must give proof in Court
- Proof can be:
 - personal testimony, statements from witnesses, photos, written threats, police reports, medical notes, hospital records, Court decision

Exclusive Possession Order

- More likely to be granted if **your spouse has another place to live**
- Financial situation can affect the possibility of living in another place



Review Questions

Review Question 1

My partner and I have been living in the same house for 5 years. I can apply for an Exclusive Possession Order, even though we never got married.

True or False?

Review Question 1

My partner and I have been living in the same house for 5 years. I can apply for an Exclusive Possession Order, even though we never got married.

False.

In Ontario family law, only married spouses can get a Court Order for exclusive possession of the matrimonial home. The length of time an unmarried couple has been in a relationship does not change this. The name on the legal title to the home does not change this either.

For unmarried couples, if only one person's name is on the legal title, that person can force another person to leave their home, including a long-time, unmarried partner.

Review Question 2

My partner and I are married, so I cannot change the locks on the family home even if I have an Order for Exclusive Possession.

True or False?

Review Question 2

My partner and I are married, so I cannot change the locks on the family home even if I have an Order for Exclusive Possession.

False.

Under Ontario family law, if one spouse has an Order for Exclusive Possession, that gives the legal right to keep the other spouse out of the matrimonial home, including changing the locks.

Both spouses are required to follow the terms of the Order, and it may be effective only until there is an agreement between the spouses, or a new Court Order about what to do with the matrimonial home.

Review Question 3

I want to get an Order for Exclusive Possession of my home to make sure my kids and I are safe from my abusive husband. But I can't afford to take over the monthly mortgage payments by myself.

An Order for Exclusive Possession means you get to stay in your home and your spouse has to leave, but you also have to take on full responsibility for making all payments to stay in the home.

True or False?

Review Question 3

An Order for Exclusive Possession means you get to stay in your home and your spouse has to leave, but you also have to take on full responsibility for making all payments to stay in the home.

False.

If your spouse is abusive, and an Order for Exclusive Possession is important for your or your children's safety, these are strong arguments that the Court will consider in your application.

It is true that if you get the Order, you can stay in your home with your children, and your spouse will have to leave.

But it does not necessarily mean you will also have to take over all of the payments to stay in your home. The Court can order that you have to maintain the home and pay rent.

The Court could also order that your spouse has to make payments to you, to pay some or all of the rent.

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Restraining Orders

Court Orders Against Abusive Partners

2. Restraining Orders

- An Order from a Court that deals with family issues:
 - Ontario Court of Justice
 - Ontario Superior Court
 - Superior Court of Justice - Family Court Branch (Unified Family Court)
- Can be against a person:
 - you are or were married to
 - you are or were in a relationship with, and living together for any period of time
 - who is the other parent of your child under 18
- If you have a reasonable fear about your safety or the safety of a child in your custody
- Does not matter if you own or rent, or whose name is on the legal title or lease

Restraining Order

- Court can order limits on how your partner/other person contacts you and/or your children
- Court can order another person:
 - to **leave the family home and stay away**
 - to stay away from you, your work, other places you go
 - to stay away from your children, school, daycare, other places they go
 - to not contact you/your children (through calls, text, email, social media, another person)
- May be temporary or final

Restraining Order

- Only one part of a full safety plan
- Complete a written application in a Court that deals with family matters, with or without other family law issues
- If you are living in a safe place, good to give another contact address on Court documents
- You have to prove to the Court that your fear is reasonable
- Proof can be:
 - personal testimony, statements from witnesses, photos, written threats, police reports, medical notes, hospital records, Court decision

Restraining Order

- You must arrange to send Court documents to your partner/other parent about your application for a Restraining Order
- You may have to appear in Court together
- In potentially dangerous situations, you can ask the Court for a Restraining Order before giving notice to the other person
 - called an “*ex parte*” order (“without notice”)

Restraining Order

- Good to get help from a lawyer
 - Assaulted Women's Helpline
 - Legal Aid Family Violence Authorization Program
 - Duty Counsel and law students in courthouses
 - Family Court Support Workers
- Legally binding
- Restraining Order will be on CPIC (Canadian Police Information Centre)
- Good to carry a copy at all times, have a copy at home, with school/daycare, family, employer, etc.
- Breaking any part of the Order is a criminal offence
- Call the police and show them a copy of the Restraining Order



Review Questions

Review Question 4

You can apply for a Restraining Order on its own, or as part of an application to Court for other family law issues.

For example, you can ask for a Restraining Order with cases for child custody, child and/or spousal support, for Exclusive Possession Orders, and other family property issues.

True or False?

Review Question 4

You can apply for a Restraining Order on its own, or as part of an application to Court for other family law issues. (including cases for child custody, child and/or spousal support, for Exclusive Possession Orders, and other family property issues)

True.

In Ontario, any Court dealing with family law issues can grant a Restraining Order on its own, or as part of a case dealing with other family law issues.



Bail Conditions

Court Orders Against Abusive Partners

3. Bail Conditions

- After a person has been charged with a crime, **bail** is the temporary release of that person, before the trial
- Possible with any criminal offence
- For sexual or domestic assault, the accused person may be kept in jail, or released on bail with conditions, such as:
 - no contact of any kind with the victim
 - **no living with or entering the home of the victim**
 - no firearms

Bail Conditions

- **Sexual Assault**
 - can involve any sexual touch without consent including attempts and threats
 - any sex or gender identity of people involved
 - in a relationship or not
- **Domestic or Intimate Partner Assault**
 - any use of or threatened force in an intimate relationship without consent
 - partners of any sex or gender identity
 - legally married, living together or dating
 - current or past relationship

Bail Conditions

If your partner is charged with a criminal offence, and you are afraid for your safety if your partner is released into the community before the trial:

- tell the police
- if you are the victim, tell the Crown Counsel (government lawyer)
- if you are the victim or a witness, tell the Victim Witness Assistance Program (VWAP) worker



Peace Bonds

Court Orders Against Abusive Partners

4. Peace Bonds

- Similar to a Restraining Order
- If you are afraid about your safety, or the safety of your spouse, partner or child
- **Puts limits on how another person contacts you, including ordering them out of your house**
- Not limited to spouses/intimate partners
 - can also apply to a **family member, stalker, stranger**
- An order from **Criminal Court**, for up to **1 year**

Peace Bond

- Ask police or a Justice of the Peace, and complete written form
- No criminal charge against the person needed
- Applicant must prove fear is reasonable
- Court will notify the person that a Peace Bond against them has been requested
- Both parties may appear in Court together
- Fewer options for free legal help

Criminal Code, s. 810

Peace Bond

- Court can order a person to sign a Peace Bond, which is a promise to keep the peace and follow the conditions ordered
- Having a Peace Bond in place is not a criminal charge or conviction
- Legally binding

Peace Bond

- Peace Bond will be registered on the CPIC system (Canadian Police Information Centre)
- Good to carry a copy at all times, have a copy at home, and with family, employer, etc.
- Breaking a term of a Peace Bond is a criminal offence
- Call the police and show them a copy of the Peace Bond



Review Questions

Review Question 5

I am not married, so I can't get a Restraining Order. My only option to force my boyfriend out of our home is through a Peace Bond that says he can't come near me or my home.

True or False.

Review Question 5

I am not married, so I can't get a Restraining Order. My only option to force my boyfriend out of our home is through a Peace Bond that says he can't come near me or my home.

False.

You don't have to be married to get a Restraining Order. You can apply if you are or were married, or if you are or were in an intimate relationship as long as you lived together for some period of time, or if you have a child under 18 with that person.

In this case, if the couple lived together at some point or have a child together, and the Court believes there is a good reason to fear for your safety, you could apply for a Restraining Order in Family Court.

If the couple does not have a child and never lived together, then the only option is to go to police or a Justice of the Peace and ask for a Peace Bond from Criminal Court.

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Probation Orders

Court Orders Against Abusive Partners

5. Probation Orders

- Probation is a Court Order imposing conditions on the behaviour of a person found guilty or convicted of a crime
- Up to 3 years
- Person on probation often has to report to a Probation Officer
- Person on probation must “keep the peace and be of good behaviour” as well as all conditions in the Probation Order

Probation Order

- For sexual or domestic assault offenders, probation orders usually prevent any contact with the victim
 - includes **an order to live away and stay away from the victim's family home**
 - unless she gives specific consent to contact
 - can include other conditions for safety
 - no alcohol or drugs
 - no firearms
 - attend Partner Assault Response Program (PAR)

Probation Order

- Breaking a condition of a Probation Order is a criminal offence
- If you are afraid an offender has or will break a condition of a Probation Order you can call:
 - Police
 - Probation Services
 - the Victim Witness Assistance Program
 - PAR (while the offender is in the program)



The Partner Assault Response Program (PAR)

Court Orders Against Abusive Partners

6. **Partner Assault Response (PAR) Program**

- Part of the criminal court system for domestic assault
- A course for partners accused of domestic assault
- Usually for first offences, without serious injuries
- Provided by community agencies across Ontario

See webinar: *The Partner Assault Response Program*

www.onefamilylaw.ca/en/webinar/#parprogram

Partner Assault Response Program

- Court orders the accused to attend PAR
 - as part of the resolution of a domestic assault charge
- Order to attend PAR can be:
 - a condition of bail
 - a condition of a Peace Bond
 - a condition of a Probation Order
 - part of a conditional sentence

Partner Assault Response Program

- While an accused is attending PAR, there can be an order for the accused to not have any contact with the abused partner
 - **including not living in or going near the family home**
- PAR counselor must contact the abused partner while the accused is attending sessions
- A partner who is afraid the accused has or will break a Court Order, can report to PAR
- Accused may have to return to Court for a new criminal charge, new conditions, or a different sentence

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Review Questions

Review Question 6

If your spouse has been charged with domestic assault and you want a Court Order to get your spouse to move out and stay away from your home, you have to go to Family Court.

True or False?

Review Question 6

If your spouse has been charged with domestic assault and you want a Court Order to get him to move out and stay away from your home, you have to go to Family Court.

False.

Even though this is an issue between spouses, there are Orders from Criminal Court that can end up forcing your spouse or intimate partner to move out and stay out of the family home. They include bail conditions, a Peace Bond, a probation order and a conditional sentence.

Another option is to go to a Court that deals with family law issues, to get a Restraining Order.

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Additional Resources

Family Law Resources

- **Ontario Women's Justice Network (OWJN)**
www.owjn.org
- **FLEW (Family Law Education for Women)**
www.onefamilylaw.ca/en/resources/
- **FODF (Femmes Ontariennes et Droit de la Familles)**
www.undroitdefamille.ca/
- **Your Legal Rights**
www.yourlegalrights.on.ca
- **Separation and Divorce: Custody, Access, Parenting Plans** www.cleo.on.ca/en/publications/custodyaccess

Family Law Resources

- **Family Law Information Program (FLIP)**
www.legalaid.on.ca/en/getting/flip.asp
- **Family Law Information Centres (FLICs)**
www.legalaid.on.ca/en/getting/type_family.asp
- **Family Law Services Centres (FLSCs)**
www.legalaid.on.ca/en/contact/contact.asp?type=flsc
- **Family Responsibility Office**, Ministry Community & Social Services
 - Toll-free: 1-888-815-2757

Finding a Lawyer

- **Legal Aid Ontario**

- Free telephone interpretation services for languages other than English & French
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

www.legalaid.on.ca/en/getting/default.asp

- **Community legal clinics**

- Toll-free 1-800-668-8258

www.legalaid.on.ca/en/contact/contact.asp?type=cl

- **Canadian Family Law Lawyers Network (National)**

www.cfln.ca

Finding a Lawyer

Law Society of Upper Canada Lawyer Referral Service

- Online: www.findlegalhelp.ca (English) or www.recherchejuriste.ca (French)
- Crisis line: 416-947-5255 or Toll free: 1-855-947-5255

Justice Net

- Reduced fee lawyers for low income people not eligible for Legal Aid
- [1-866-919-3219](tel:1-866-919-3219)
www.justicenet.ca/directory/search/

Finding a Lawyer

See FLEW Webinars:

- Where to Look for a Family Law Lawyer
- Your Day in Family Court: How to Prepare and What to Expect

www.onefamilylaw.ca/en/webinar/

Toolkit for a good Client-Lawyer Relationship

schliferclinic.com/vars/legal/pblo/toolkit.htm

- Barbra Schlifer Commemorative Clinic

Court Resources

Ontario Courts

www.ontariocourts.on.ca/

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
 - Superior Court of Justice www.ontariocourts.ca/scj/en/famct/
 - Ontario Court of Justice www.ontariocourts.ca/ocj/family-court/overview/

Ontario Court Locations

www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario

Family Court Support Workers

- Check local community agency or call
- Toll-free: 1-888-579-2888 or 416-314-2447

Ministry of the Attorney General

www.attorneygeneral.jus.gov.on.ca/english/

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

Court Resources

- **Ministry of the Attorney General's website** also provides some guides to Family Court:
 - **Guide to Procedures in Family Court:**
<http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/default.asp>
 - **Guide to parenting affidavits for custody orders:**
http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/Parenting_Affidavit_Self-Help_Guide-EN.pdf
- You can get more information about family law, forms and processes at:
 - **Family Law Service Centres** (Legal Aid Ontario)
 - **Family Law Information Centres** (in family courthouses)

Domestic Violence and Abuse

For information, if your partner is abusive or violent:

- **Assaulted Women's Helpline** www.awhl.org
 - 24 hours/7 days; multiple languages
 - Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- **Ontario Coalition of Rape Crisis Centres**
www.sexualassaultsupport.ca/
- **Network of Sexual Assault/Domestic Violence Treatment Centres** www.sadvtreatmentcentres.net.
- **Victim Services Directory** www.justice.gc.ca/eng/pi/pcvi-cpcv/vsd-rsv/index.html

Domestic Violence and Abuse

- **Barbra Schlifer Legal Clinic**
 - Toronto: 416-323-9149 x278 (legal intake) TTY: 416-3231361
 - Free counselling, referral, legal and interpreter services to survivors of violence (Family, Criminal and Immigration law)
- **Family Violence Authorization Program (Legal Aid Ontario)**
 - Free 2-hour emergency meeting with a lawyer
 - Offered through some shelters and community legal clinics
 - Toll-free: 1-800-668-8258; TTY: 1-866-641-8867