

# Legal Options for Protection from Domestic Violence and Stalking

## Protection Orders

*Getting protection from domestic violence and stalking is a complex issue, but there is legislation to protect those who qualify. If you are in immediate need of protection for yourself and/or your children, you may apply for a Protection Order.*

*This fact sheet provides information to help you apply for a Protection Order.*

### Definitions

**Applicant** - person applying for the order

**Respondent** - person you want to be protected from

**Judicial Justice of the Peace (JJP)** - the special justice who will hear your case and make a decision

**Protection Order Designate (POD)** - a person specially trained to help people apply for Protection Orders (See contact number at the end of this sheet.)

### What is a Protection Order?

A Protection Order is a court order, granted on an urgent basis, forbidding the respondent from having contact with the applicant. These orders are granted by a JJP and can contain all or some of these specific conditions:

- The respondent may not communicate with you or contact you directly or indirectly.
- The respondent may not come near any place that you or a specified person happen to be or regularly attend, such as your home, job, school, or place of worship.
- The respondent may not follow you or any specified person.

- The respondent must turn over any weapons to the police, and the police can search for and seize weapons.
- The respondent must give you temporary possession of your necessary personal belongings.
- You may have the help of a police officer to get your personal belongings.
- You may have the help of a police officer to remove the respondent from your home.

### Who can get a Protection Order?

You can get a Protection Order if someone has stalked you or subjected you to domestic violence and there is reason to believe that the behaviour will continue. You do not have to wait until you have actually been injured to seek help.

As the applicant, you must explain to a JJP why you need the order and supply facts, times, dates and locations of incidents that show why you urgently need protection. If your application is based on domestic violence, you must also show that:

- you are currently living with or dating the respondent or have done so in the past; or
- you have a child or children with the respondent; or
- you and the respondent are family members.

### How much does it cost?

There is no charge for getting a Protection Order. However, there is a fee if you apply to have the Protection Order cancelled.

## How do I get a Protection Order?

There are two ways to apply for a Protection Order – in person or by telephone.

### *To apply in person:*

- Go to the Law Courts building nearest to you and ask for a hearing.
- Fill out the application and a fill-in-the-blank affidavit describing the stalking or domestic violence.
- Court staff will schedule the hearing for you and may recommend that you see a POD to help you with your application and provide information about safety planning.
- Go to the court room where your application will be heard. The JJP will either be in the room or in contact by video conference.
- The JJP will review your application, affidavit and any verbal evidence given, and make a decision.

You can bring a friend or a POD with you to court for support. It is best not to bring your children.

### *To apply by telephone:*

- Go to a POD, lawyer or police officer and ask for help.
- Fill out an application and a fill-in-the-blank affidavit.
- The JJP will be called and you can give your evidence over the phone, as long as it is possible to tape record it.
- The JJP will review your application, affidavit and any verbal evidence, and make a decision.

You don't need witnesses or other people to give evidence when you're applying for a Protection Order, but they can do so if they have first-hand information about the facts.

## How long does it take?

If the JJP finds you have sufficient evidence, you will be granted an order immediately. It will automatically go into a computer registry that is available to all police, so they can enforce the order if you call them for help.

## How does the respondent know I have a Protection Order?

If a Protection Order is granted, the police or Sheriff's Office serve the respondent as soon as they are able. The respondent then has 20 days, or a longer period if a judge allows it, to apply to have the order set aside (cancelled).

## Can the respondent stop the Protection Order?

If the respondent applies to the Court of Queen's Bench to have the order set aside (cancelled), you will be notified. The respondent will be allowed to see and listen to the evidence you gave in court. You will be given notice of the hearing and will have the opportunity to explain to the court why the order should stay in place and answer the respondent's evidence.

## How long is the order in effect?

Protection Orders made **after** October 31, 2005 are usually in effect for three years. However, the JJP can grant a longer order if he/she believes you need protection for a longer time. If you have a Protection Order that has expired or is about to expire and still need protection, you can apply to get a new one. Protection Orders made **before** October 31, 2005 do not expire.

## Does the order apply outside of Manitoba?

Some provinces, including Manitoba, have laws that recognize Protection Orders granted elsewhere. For more information, check with a lawyer or with the Family Law Branch, Manitoba Justice (945-0268 or toll-free 1-800-282-8069 ext.0268).

## Remember

- A Protection Order is not a guarantee of safety – a safety plan is your best defence. No matter what court orders you get, you still need a safety plan.
- You need to get the order that best fits your situation.
- Just because you ask for a Protection Order does not mean you will automatically get one.
- JJPs issue court orders based on case law, facts and evidence. You must be specific about the facts of your situation – dates, times, places.

## Information

For more information on domestic violence or safety plans, call the provincial crisis/information line toll free at **1-877-977-0007**.

For more information about legal protection available through the courts, call Manitoba Justice Victim Services, toll free at **1-866-484-2846**.