

Human Trafficking Restraining Orders

How to apply for a restraining order against a trafficker

Ministry of the Attorney General

This guide is not legal advice. If you have questions or need advice about your case, you should speak to a lawyer.

This guide is not a substitute for reading the applicable legislation, the *Prevention of and Remedies for Human Trafficking Act, 2017*. O Reg 346/18: Restraining Order Applications and Appeals is the regulation that sets out the procedure for human trafficking restraining order applications.

You may have concerns about your children, immigration status, or criminal record. If this is the case, you should speak to a lawyer.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211.

Otherwise, you may use the Law Society Referral Service (LSRS) operated by the Law Society of Ontario. The LSRS is an online referral service that will provide you with the name of a lawyer in your area. This lawyer will provide a free consultation for up to 30 minutes to help you determine your rights and options. To use the service, visit: <https://lsrs.lsuc.on.ca/lsrs/>.

Ce guide est également disponible en Français.

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Introduction

This guide is for anyone who is applying for a restraining order against a trafficker.

“Human trafficking” involves recruiting, transporting, transferring, receiving, holding, concealing, or harbouring a person, or exercising control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation.

The **“trafficker”** is the person who commits the human trafficking of another person. The person who is the subject of a trafficker’s conduct is referred to as the **“victim of trafficking.”**

If you want to apply for an order, you will either need to attend at a courthouse to appear before a judge or you can request that the order be given based on the written application or via a telephone or videoconference with the judge.

Even if you do not want a restraining order, there are other supports available to trafficked victims, such as basic necessities, meals and groceries, accommodation, replacement of government documents, dental care, tattoo removal, counselling (including traditional Indigenous health services), and residential treatment expenses. For more information call 1-833-999-9211.

1. What is a restraining order?

A restraining order is a court order made by a judge to help protect you or another specified person (for example, your child or a family member). It requires a trafficker to stay away from you.

A restraining order will list conditions that the trafficker must obey, and can contain any reasonable condition that the court thinks is needed. The restraining order can be general—that the trafficker has to stay away from you—or it can be specific. It can say that the person must not come to your home, to your place of work, or to other places

where you often go (for example, your place of worship or your parents' home). The restraining order can also include that the trafficker has to return your property or documents, and that the trafficker can't keep, make, sell, advertise, or distribute any video recording of you.

If a person disobeys a restraining order, the police can arrest them and charge them with breaching a court order, which is a serious offence.

2. Who can apply for a restraining order?

You can apply for a restraining order if you:

- are a victim of trafficking;
- have lawful custody of a child who is a victim of trafficking, even if you do not have the child victim's consent;
- are acting on behalf of a victim of trafficking, and you have the victim's consent; or
- are acting on behalf of a person with lawful custody of a victim of trafficking, and you have that person's consent.

3. Do I need a lawyer to ask for a restraining order?

You do not need a lawyer to apply for a restraining order, even if you are under the age of 18. However, having a lawyer to help you may be a good idea. A lawyer may be especially important if your case has complicating factors such as immigration issues.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211. You can also call this number if someone makes an application on your behalf, and you oppose the application.

If you are not a victim of trafficking or if you are applying without the consent of the victim but would like to get a lawyer, see the information provided on the front of this guide.

4. Will the trafficker be notified that I am applying for a restraining order?

There are two ways to apply for a restraining order against a trafficker: **1) Applications Without Notice** and **2) Applications With Notice**.

a) Application *Without* Notice

If you are in immediate or imminent danger from a trafficker, you can apply for a restraining order without notice to the trafficker. This is done by filing an **Application for Restraining Order (Form 1)** at the court house.

Filing an application without notice means that the trafficker will not be notified that you are asking the judge for a restraining order. However, once an order is granted, the trafficker will be notified of the order and get a copy of your application. You can ask the judge to limit the information the trafficker receives, and it will be up to the judge to make that decision.

If for some reason the restraining order is not granted, the trafficker would not be notified that you applied.

If you are making an application without notice, you will need to provide evidence that you have been, or likely will be, trafficked and that you are in immediate or imminent danger.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211.

Only the judge can grant the order. Once your application is filed with the court, the judge would usually be available to consider the order either that same day or the next business day.

b) Application *With* Notice

In cases where you are not in immediate or imminent danger from a trafficker, you should file an **Application for Restraining Order (Form 1)** and give notice to the trafficker. If the trafficker opposes the Application, he or she can prepare a **Response to Application for Restraining Order (Form 4)** and you will receive a copy.

If you are making an application with notice, the trafficker will receive a copy of your application documents and will have an opportunity to respond to the application.

5. Will anyone else know that I am seeking a restraining order?

An application for a restraining order is a public court document that can be obtained upon request, unless the judge orders otherwise. If you need a court order to restrict access to your documents, speak to a lawyer to help you with this.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211.

If you apply for a restraining order without notice, the trafficker need not receive a copy of the application when you make it. If the judge grants a restraining order, the trafficker will be told that an order has been made against them and given a copy of your application, unless the court orders otherwise. If the application is not successful the trafficker will not be told about the application or given a copy. A trafficker can still get a copy of an application made without notice from the court file or from other sources.

If you apply for a restraining order with notice, the trafficker will know that you have applied for an order and will get a copy of your application.

a) Publication Ban for Child Parties or Witnesses (under 18 years of age)

If a party to or witness in an application for a restraining order is a child, the judge will make an **Order (Form 10)** directing that any information that could identify the child will not be published in any document or broadcast or transmitted in any way.

b) Publication Ban for Adult Victims or Witnesses

If you are an adult victim or witness in an application for a restraining order, you can file a **Motion (Form 6)** with the court requesting an **Order (Form 10)** restricting publication.

The effect of the Order restricting publication is that any information that could identify you will not be published in any document or broadcast or transmitted in any way, if the judge is satisfied that the order is needed for the proper administration of justice.

If you are applying for a restraining order without notice, you do not need to serve the **Motion (Form 6)** on the other parties and you do not need to provide the court with proof of service.

If you are applying for a restraining order with notice, a **Motion (Form 6)** must be given to all the parties, together with a blank **Response to Motion (Form 7)**. In legal terms, this is referred to as “service” or “serving.” You must also file proof of service with the court using the **Affidavit of Service (Form 11)**.

An order restricting publication does not prevent a member of the public from requesting court documents. It also does not prevent the trafficker from being served with an application once a restraining order has been granted against him or her. If you feel that you need additional protection for your court material, beyond a publication ban, you should speak to a lawyer.

6. How is this different from a peace bond or family law restraining order?

A peace bond under the *Criminal Code* or common law may be obtained in circumstances where you fear for your safety. To get a peace bond, you can go to the courthouse and appear before a Justice of the Peace. The respondent will be notified and may respond. A peace bond is typically imposed for a one year period, and could include conditions that are similar to a restraining order.

Unlike a peace bond, you can get a human trafficking restraining order without notifying the trafficker. It can last for up to three years, and be extended.

A family law restraining order may be obtained only in the family context, where you fear your former or current spouse or partner will hurt you or your children.

Applying for a Restraining Order at the Ontario Court of Justice

1. How do I apply for a restraining order?

To apply for a restraining order, you take the following steps:

Step 1: Find out which court house you should go to, to apply for a restraining order.

Step 2: Determine if you are applying with or without notice.

Step 3: Complete the application form and consent (if applicable).

Step 4: Prepare any additional documents, if applicable (e.g. other affidavits).

Step 5: Have the application and documents served on (given to) the trafficker (only for applications made with notice).

Step 6: File your application documents with the court.

Step 7: Attend your hearing (if applicable).

Step 8: If the judge grants the restraining order, ask court staff for a copy of the restraining order.

Step 1: Find out which court house you should go to, to apply for the restraining order.

You can apply for a restraining order by filing certain documents at the Ontario Court of Justice. An application for a restraining order can be filed in any court location. Applications will be heard by a criminal court judge.

To find a court address, visit the following link to the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/.

You can also look in the blue pages of your telephone directory under "Courts" and find the address and telephone number of the court you can go to.

Step 2: Determine if you are applying with or without notice.

You will need to file an **Application for Restraining Order (Form 1)** to start the court process. The application form sets out all of the issues that you are asking the judge to deal with. Once you file an application, there are certain steps in the court process that you must follow depending on whether you are applying with or without notice.

For a detailed discussion of applications both with and without notice, see question 4 above.

Step 3: Complete the application form and consent (if applicable)

To start an application for a restraining order, you will need to complete:

- a. **Form 1: Application for Restraining Order;**
- b. **Form 2: Consent to Person Acting on Behalf (if applicable); and the**
- c. **Canadian Police Information Centre Restraining Order Information Form, which is only available at the criminal court house**

a) How do I complete an Application?

The information you write on the **Application for Restraining Order (Form 1)** tells the judge what you are asking for. If you are making an application with notice, the trafficker will receive a copy of these papers.

If you are making an application without notice, unless the court orders otherwise, the trafficker will receive a copy of your application if the order is granted.

If you are acting on behalf of a victim of trafficking that you do not have lawful custody of, or on behalf of a person with lawful custody of a victim of trafficking, he or she must complete the **Consent to Person Acting on Behalf (Form 2)**. This Consent must be filed in the court office with the application.

If you are making an application with notice, the application must be served on the other parties (the trafficker and, if applicable, the victim).

You have to provide a method of service on the application. If you don't want to provide your actual address, you can provide an email address, fax number, or your lawyer's address where documents related to the application can be sent and received by you. You can even specify that the documents be emailed or faxed to you rather than mailed, so long as it can be reasonably expected that any documents served on you will come to your attention.

If the trafficker is also known by another name (an alias), then include the name that the person is commonly known as. Make sure to indicate that they are aliases.

When you have completed the application, take it to the court house to be signed and dated by the clerk.

b) How do I complete a Canadian Police Information Centre Restraining Order Information Form?

Court staff will ask you to complete a Canadian Police Information Centre (CPIC) Restraining Order Information Form when you apply for a restraining order. If a restraining order is granted, this form is sent to the police to inform them that a judge has made the restraining order.

This form will ask for information about the trafficker, including their name. If the person is commonly known by another name that is not their legal name (i.e. an alias) or is commonly known by a nickname, indicate these other names on the CPIC form.

c) What do I do if I don't consent to the application?

If someone is making an application on your behalf, and you oppose the application, you can contact the Ontario Ministry of the Attorney General for free legal representation. Call toll-free at 1-833-999-9211.

d) What do I do if I did consent to the application and want to withdraw my consent?

If you are a trafficked victim or a person with lawful custody of a trafficked victim and you have consented to someone acting for you in making the application, you have the right to withdraw your consent.

You can do so by completing the **Withdrawal of Consent to Person Acting on Behalf (Form 3)** and filing it at the court house.

By withdrawing your consent, you can choose to continue the application for the restraining order as the applicant, or file a **Consent (Form 2)** to have a different person act on your behalf in the application.

Step 4: Prepare any additional documents, if applicable (e.g. other affidavits)

In addition to the **Application For Restraining Order (Form 1)**, and the **Consent to Person Acting on Behalf (Form 2)** (if applicable), you or your lawyer can prepare any other documents that you consider appropriate and helpful to assist the court. These other documents may include:

- a) Evidence that you have been trafficked;
- b) Case law you intend to rely on; and
- c) Any more testimony you wish to submit, using the **Affidavit – General (Form 5)**.

Step 5: Have the application and documents served on the trafficker (only for applications made with notice)

a) **Making an Application without Notice**

If you are applying for a restraining order without notice, the court documents do *not* need to be served on the other person. **Proceed to Step 6.**

b) **Making an Application with Notice**

If you are applying for a restraining order with notice, a copy of all the court documents must be served on the trafficker and the victim (if you are not the victim or if you do not have legal custody of the victim), along with a blank **Response to Application for Restraining Order (Form 4)**, at least fifteen days before the hearing date.

The application can be served in any of the following ways:

- a) Personally (someone gives the application directly to the trafficker);
- b) By leaving a copy of the document at the trafficker's last known address with someone who appears to be at least 16 years of age and, on the same day or on the next, mailing another copy to the person at that address;
- c) By mail or courier to the address shown on the latest document filed by the trafficker or, if none, the trafficker's last known address;
- d) By leaving a copy with the trafficker's lawyer of record, if any, or with a lawyer who accepts service in writing on a copy of the document;
- e) By mail or courier to the trafficker's lawyer of record, if any;
- f) By faxing a copy to the trafficker's lawyer or, if none, to the trafficker;
- g) By emailing a copy the trafficker's lawyer or, if none and the trafficker consents, to the trafficker; or
- h) By depositing a copy at a document exchange to which the trafficker's lawyer or, if none, the trafficker belongs, so long as the copy deposited and an additional copy of the document are date-stamped by the document exchange in the presence of the person depositing the copy.

If you have a lawyer, your lawyer will serve the documents for you.

The court may also allow another method of service, if it is satisfied that it would be impractical to serve the document in one of the prescribed ways.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211.

Step 6: File your documents with the court

a) Filing an Application without Notice

If you apply for a restraining order without notice, you only need to file the following documents with the court:

- 1) **Form 1: Application for Restraining Order;**
- 2) **Form 2: Consent to Person Acting on Behalf (if applicable); and the**
- 3) **Canadian Police Information Centre (CPIC) Restraining Order Information Form.**

Since you are applying without notice, you do not need to serve the documents or file proof of service with the court.

When you file your application for a restraining order, the court clerk will advise you when the hearing date will take place. The court will keep the original documents. Be sure to keep a copy for yourself.

If you are filing additional documents with the court (including **Form 5: Affidavit**), you may do so at any time on or before the hearing date.

b) Filing an Application with Notice

If you apply for a restraining order with notice, you need to file the following documents with the court:

- 1) **Form 1: Application for Restraining Order;**
- 2) **Form 2: Consent to Person Acting on Behalf (if applicable); and the**
- 3) **Canadian Police Information Centre (CPIC) Restraining Order Information Form, which is only available at the criminal court house.**

When you file your application for a restraining order, the court clerk will advise you when the hearing date will take place. The court will keep the original documents. Be sure to keep a copy for yourself.

At least fifteen days before the hearing date, you must provide proof to the court that you served your documents on the other person. File an **Affidavit of Service (Form 11)** with the court to provide proof of service.

If you are unable to serve your application on the other persons on or before the hearing date, you can ask the clerk to set a new hearing date. You can then make any necessary changes to the application and serve it immediately on the other person and, if you are not the victim, on the victim.

If you can't serve your application even with more time, you can ask the judge on your hearing date to make an **Order (Form 10)** dispensing with the requirement for service.

You can file additional documents with the court (including **Form 5: Affidavit**) as long as you serve them on the other parties, you provide proof of service (**Form 11**), and you file the documents at least 5 days before the hearing date.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211.

Step 7: Attend your hearing (if applicable)

As you will have indicated in your **Application for Restraining Order (Form 1)**, the application will be heard either:

- (a) in person;
- (b) in writing;
- (c) by telephone or video conference; or
- (d) by a combination of these methods.

If you would like your hearing to be held by telephone or video conference, you must request this option at least five days before the hearing date if the application is made with notice. In a without notice application, the administrative request for a Telephone/Video Conference form will need to be completed at the court house at the same time as filing the application.

When deciding whether to make a restraining order, the court will consider various factors to determine if there is a need for a restraining order, such as:

- If the ages of the victim and the trafficker are very different;
- If the victim is vulnerable because of their immigration status;
- If the victim has a physical or mental disability;
- If the trafficker is in a position of trust, power or authority over the victim;
- If the trafficker has threatened the victim or someone known to the victim;
- If the trafficker has deceived, committed fraud or coerced the victim;

- If the trafficker has provided alcohol or illegal drugs to the victim, or is withholding such substances unless the victim provides labour or sexual services;
- If the trafficker is controlling the victim's finances, including withholding money;
- If the trafficker is in possession of the victim's passport, driver's license, health card or other form of identification; and
- If the trafficker is possessing, making, selling, or sharing a video where the victim is nude or shown to be engaged in sexual activity.

You will need to provide evidence that the judge can rely upon to grant an order. Your lawyer can help with this.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211.

Step 8: If the judge grants the restraining order, ask court staff for a copy of the restraining order.

If the judge grants the restraining order, court staff will prepare the order for you. They will do so even if you have a lawyer. You should not leave the court house until you get a copy of the restraining order. Tell the staff at the court house that a restraining order was granted and you are waiting for a copy.

The restraining order you receive will be in **Form 9: Restraining Order**, and will contain information about when the restraining order takes effect, how long the restraining order will be in effect, and the specific conditions attached to the restraining order.

If the restraining order was granted with notice, the sheriff will, with the assistance of a police officer if required, serve a copy on each of the parties as soon as possible after an order is made.

If the restraining order was granted without notice, the sheriff will, with the assistance of a police officer if required, serve a copy on each of the parties:

- a) Personally;
- b) By leaving a copy of the document at the trafficker's last known address with someone who appears to be at least 16 years of age and, on the same day or on the next, mailing another copy to the person at that address;
- c) By mail or courier to the address shown on the latest document filed by the trafficker or, if none, the trafficker's last known address; or

- d) By leaving a copy with the trafficker's lawyer of record, if any, or with a lawyer who accepts service in writing on a copy of the document.

If the restraining order was granted without notice, it will be enforceable only after the trafficker is served with the order.

You should keep a copy of the restraining order with you at all times. If you have children who are also protected by the restraining order, it is a good idea to give a copy of the order to the children's school or daycare, or to a family member. A copy could be useful if the person restrained disobeys any of the terms of the restraining order and the police are called. You, the school, or the daycare staff could then show the police a copy of the restraining order. This will help the police decide if the person being restrained should be arrested.

Even if a judge grants a restraining order, it is important to also develop a safety plan. If at any time you have a concern for your safety or the safety of someone else, contact the police immediately by calling 911.

After the Restraining Order is Made

1. What will happen to the person being restrained?

If the restraining order is made with notice, it will be enforceable by the police on the date it comes into effect (as indicated by the judge on **Form 9**).

If the restraining order is made without notice, it will be enforceable only after the trafficker is served with the order. Once an order is made, the peace officer will give it to the trafficker as soon as possible. You will be informed by the peace officer once the restraining order is served on the offender.

If the order is breached, it is an offence under the *Criminal Code* and the police can arrest and charge the trafficker.

Once the police become aware that the order is breached, they can arrest the trafficker and charge the trafficker with the criminal offence of breaching a court order. There are various ways that the police can learn that the trafficker has breached the order. For example, from information received by the victim or other witnesses or through their own observations.

2. What if the trafficker tries to challenge the restraining order?

If you brought a restraining order application without notice, the trafficker can bring a **Motion (Form 6)** to the court to have the order set aside or changed. If the trafficker asks the court to change the restraining order, you will need to prove that the order should continue without being changed.

If a trafficker wants to appeal a restraining order granted by a judge, he or she would need to file an appeal in order to do so. You would be given notice of this (at the address or email of your choosing). Legal help would be available to you.

If you are a victim of trafficking, a parent / guardian of a child victim, or a person applying with the consent of a victim, you can contact the Ontario Ministry of the Attorney General about free legal representation. Call toll-free at 1-833-999-9211.

3. What if I have a restraining order but I need to ask for different terms? How do I change my restraining order?

If there has been a material change in circumstances since the restraining order came into force, you can apply to the court to set aside or change the restraining order.

To do so, you will need to:

- a) File a **Motion (Form 6)** with the court;
- b) Serve the motion, together with a blank **Response to Motion (Form 7)** and a copy of the restraining order, on the other parties; and
- c) File an **Affidavit of Service (Form 11)** with the court.

If you brought a restraining order against the trafficker without notice, that person can bring a **Motion (Form 6)** to the court to have the order set aside or varied, even if there has not been a material change in circumstances.

4. When will the restraining order end?

The order will say the date on which it ends. A court can grant a restraining order for up to three years.

If it is necessary to extend the period of the restraining order, you can apply to the court for an extension of the expiry date for up to three more years. You can apply for this extension more than once.

To apply for an extension, you must:

- a) File a **Motion (Form 6)** with the court;
- b) Serve the motion, together with a blank **Response to Motion (Form 7)**, and a copy of the restraining order, on the other parties; and
- c) File an **Affidavit of Service (Form 11)** with the court.

If you are making an application for an extension that will be not be heard before your original restraining order expires, the expiry date of the order will be automatically extended until the day on which your application is decided.

If your restraining order is being appealed, the court hearing the appeal may extend the expiry date of the restraining order until the appeal is decided.

Forms

Form 1: Application for Restraining Order

Form 2: Consent to Person Acting on Behalf

Form 3: Withdrawal of Consent to Person Acting on Behalf

Form 4: Response to Application for Restraining Order

Form 5: Affidavit (general)

Form 6: Motion

Form 7: Response to Motion

Form 8: Notice of Withdrawal

Form 9: Restraining Order

Form 10: Order (general)

Form 11: Affidavit of Service

Exhibit: <u>National Inquiry into Missing and</u>		
<u>Murdered Indigenous Women and Girls</u>		
Location/Phase: <u>Parts 2/3 St. John's</u>		
Witness: <u>Juanita Dobson</u>		
Submitted by: <u>Julian Roy</u>		
Add'l info: <u>P02-03P04P0101</u>		
Date: <u>OCT 15 2018</u>		
Initials	I/D	Entered
<div style="border: 1px solid black; padding: 5px; text-align: center;">63</div>	<div style="border: 1px solid black; padding: 5px; text-align: center;"></div>	<div style="border: 1px solid black; padding: 5px; text-align: center;">34</div>

Exhibit: National Inquiry into Missing and Murdered Indigenous Women and Girls		
Location/Phase: _____		
Witness: _____		
Submitted by: _____		
Add'l info: _____		
Date: <u>OCT 12 2010</u>		
Initials	I/D	Entered
<input type="text"/>	<input type="text"/>	<input type="text"/>