**What is stalking?**

Many abusive men find new ways to continue the abuse and intimidate their partner after the end of the relationship.  One of the most common strategies is stalking.

Stalking is any kind of repeated activity directed at the woman that gives her reason to fear for her safety.  It includes such behaviours as calling her repeatedly, leaving messages on her telephone, sending unwanted gifts or emails, sitting outside her home or workplace, following her or showing up in places she goes like restaurants or grocery stores.

**Is stalking against the law?**

Yes. Stalking is a criminal offense in Canada, called criminal harassment, which means the stalker can be charged by the police.  If he is charged, she will be involved in the criminal court process in addition to whatever the family court processes she has going on.

If he has not been charged with anything like this before, he will likely get bail with a number of conditions.  These conditions depend on the circumstances of each case, but some common ones include:

* no contact with her, directly or indirectly
* weapons prohibition (if weapons were used or threatened or if he has access to lethal weapons -- e.g. firearms)
* prohibitions against returning to the family home
* requirement that he live at a certain address
* curfew
* alcohol and drug prohibition
* surety

**What if he is not charged?**

In some cases, his behaviour may not provide enough evidence for the police to charge him or the woman may not want to involve the police.

In this case or even if he has been charged, a woman can make an application in the family court for a restraining order.

Restraining orders are dealt with in the *Family Law Act* and the *Children's Law Reform Act*.

A woman can apply for a restraining order at the same time as she applies for other things like custody and child support or she can apply for it all by itself.

**What evidence do I need?**

A woman needs to have enough evidence to convince a judge on a balance of probabilities that she has reason to fear for her safety and/or the safety of her children.

This evidence could include:

* information about criminal charges, if any have been laid
* details of any threats he has uttered (for example: "You can leave me, but you will never get away from me"
* examples of pre-separation abusive or controlling behaviour
* information about behaviour after separation such as repeated harassing phone calls or hang ups, following her, showing up at her workplace, unwanted gifts, emails, etc.
* observations by other people of his behaviour

The abuser will have a chance in the court process to tell his side of the story.  He will try to downplay her evidence.  He may say that he just wants to get back together with her, that he misses her, and that he wants to talk to her about the kids.  He may try to make it sounds as though she is pursuing him or initiating the contact.

If the judge believes the woman has cause to fear for her safety, s/he will grant a restraining order.

Restraining orders can be short term or run for some time, even permanently.

**What can go in a restraining order?**

A restraining order can contain a number of provisions, very similar to those that appear in a bail order.  For example, it could:

* spell out the kinds of forbidden contact -- phone calls, emails, being near her house or workplace
* set a minimum distance that he must remain away from her
* prohibit his contact with certain other people -- the children, her mother
* keep him out of a township or county

**What is an *e*x *parte* order?**

Under some circumstances, a woman may be able to get an ex parte restraining order.  This means the judge gives a short-term order without hearing evidence from the stalker.  It is put in place to keep the woman safe until there is time for a proper court hearing.  Judges generally only give *ex parte* orders when there is an emergency situation of very serious potential harm to the woman.

**How are restraining orders enforced?**

Often, women are left with the responsibility of ensuring that their abuser does not breach the restraining order and of dealing with it if he does. Here are some strategies to help.

A woman who has a restraining order should have multiple copies of it made so she can carry one with her and leave copies wherever she thinks he might breach (for example, at the children's school or at her workplace).

She can document all encounters with him and all her calls to the police on a small calendar.

She can do her best not to consent to any contact with him. If she does, she can write down why (for example, she called him to tell him their child was injured so he could come to the hospital) and any steps she took to keep her safe from him (for example, she had a friend with her).

It is very helpful to let others know about the restraining order so that they know what to do if the abuser breaches it.

If he does breach, due to recent changes in the legislation, he can be arrested and charged with a criminal offence, This means he can be held for a bail hearing and his case will proceed in criminal court. It is hoped that this change will lead to stronger enforcement of restraining orders and better protection for women and children.

**What if we have kids and he wants to see them?**

There are particular challenges with restraining orders for women with children, as the abuser will use them as an "excuse" to try to get access to the woman.

Women can try to address these challenges through the custody and access order.  For example:

* he can be ordered to pay the cost of a separate phone number for the children, so he does not have to call her in order to speak to them
* communication about the children can happen in writing or by email
* exchanges can be supervised or can happen without her being present
* he can be told explicitly that he cannot use exchanges or access as a chance to harass he**r**

**What is legal bullying?**

Some abusers use the family court process itself to harass their partners.  Common legal bullying strategies include:

* bringing motion after motion in family court for no or little reason
* representing himself specifically so he can harass her, even though he could afford a lawyer or qualify for legal aid
* refusing to follow court orders
* refusing to produce required documentation such as financial information
* reporting her for non-existent violations of the custody order, for child abuse, etc.

This can be a very difficult strategy to fight but there are some provisions in the *Courts of Justice Act* and the Rules of Civil Procedure that can shut down a vexatious litigant.  Judges can make orders to prohibit someone from bringing further proceedings without first getting the specific permission of the court.  They can also make the person who is abusing the court process pay the other person's cost of coming to court or can find them in contempt of court.

*This Fact Sheet contains general legal information only.  It is not a legal document, nor is it a replacement for legal advice.  Anyone in a situation involving family, immigration or refugee law is strongly urged to meet with a lawyer to understand fully their rights and responsibilities, the legal options available to them and appropriate legal processes.  A lawyer can interpret the law and provide advice based on the personal facts and information in the specific case.*

*For information about finding a lawyer in your community, contact Legal Aid Ontario at* ***1 800 668 8258*** *or* ***417 979 1446****.*

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