

# RESTRAINING ORDERS

## VIOLENCE RESTRAINING ORDERS

**Applicant** – person applying for the restraining order.

**Respondent** – person against whom the application is made.

- 1) To be granted a violence restraining order the applicant must give evidence that
  - (a) violence has occurred **and** that there is a likelihood that the violence will reoccur in the future, **or**
  - (b) threats of a violent nature have been made and there is a real likelihood that the threats will be carried out.
- 2) An isolated incident of an assault does not necessarily mean that a restraining order will be granted.
- 3) If the applicant wants the respondent to appear at the first hearing, a summons will be issued for both parties to attend on a set date.
- 4) **Interim Restraining Orders** – If the applicant does not wish to have the respondent at the first date, then he/she may apply for an interim restraining order. (an order made in the absence of the respondent)
- 5) The interim application will be listed before the first available court ( may not be possible to list on the same day)
- 6) At the initial hearing of the interim application the applicant must give evidence to satisfy the criteria in (1). The applicant may call witnesses if they are essential to their case.
- 7) If an interim order is granted, the order only takes effect from the time of service on the respondent. ie from the time the police give a copy of the order to the respondent.
- 8) The respondent may object to the order, in which case the applicant will be notified of further court dates.
- 9) **COSTS** – Where an application is commenced but not proceeded with, or the court has dismissed an application and the respondent has incurred costs in defending the application, the applicant may be ordered to pay those costs.

## MISCONDUCT RESTRAINING ORDERS

- 1) A person may apply to the court to obtain a Misconduct Restraining Order to restrain another person from behaving in an intimidating, or offensive manner, or from causing damage to his property, or from behaving in a manner that is likely to lead to a breach of the peace.
- 2) If you apply for a misconduct restraining order, a summons will be issued for both parties to appear before the magistrate at another date. If the other party objects to the restraining order being granted then the matter will be further adjourned to a trial date for both parties to bring their witnesses. If the respondent ignores the summons or does not object to the summons then the magistrate may make a final order at the initial court date.
- 3) There is a fee for issuing a misconduct restraining order application.
- 4) To be granted a Misconduct Restraining Order the applicant must **give evidence** to show that he is intimidated, or offended, or that damage will be caused to his property, or that the behaviour will lead to a breach of the peace **and that the Respondent is likely to continue to act in such a manner.**
- 5) **COSTS**- If after commencing an action the applicant does not proceed with the action, or the court dismisses an application and the respondent has incurred costs the court may order the applicant to pay those costs.