

Civil Law Remedies

Basics on getting a restraining order and filing a lawsuit for adults who have experienced sexual violence

Jean experienced sexual violence. Because of the experience, Jean needs ongoing medical treatment and suffered financial losses. Jean sues the person who caused harm, asking the court to order the person who caused harm to compensate Jean.

Bobby's co-worker has started leaving sexual and threatening notes as well as gifts at Bobby's house. Bobby has seen their co-worker watching the house from their car. Bobby applies to the court for a restraining order prohibiting the co-worker from coming near Bobby's house and other places they regularly go.

If you have had an experience like Jean or Bobby, you are not alone. **You have options.**

If you have experienced sexual violence, you may be able to file a civil case against the person who caused harm to get a restraining order or to start a lawsuit. Civil cases are cases between parties that are not family cases and not criminal cases.

This tip sheet describes two civil law remedies which may apply to your situation:

1. Getting a restraining order to keep the person who caused harm away.
2. Filing a lawsuit against the person who caused harm for financial compensation.

Produced in collaboration with:



This tip sheet describes legal responses to sexual violence. It does not cover all responses available to those who have experienced sexual violence. Read on for more info on organizations that can provide support. The other tip sheets in this series are available at: www.cplea.ca/sexual-violence/

1 © 2021 You should *NOT* rely on this publication for legal advice. It provides general information on Alberta law only.

Civil cases are different from criminal cases and family cases.

- Civil cases recognize wrongs between parties, such as individuals or businesses.
- In criminal cases, the criminal offence is viewed as a wrong against society. The Crown prosecutor must prove to the judge (or jury) that the person who caused harm committed the crime beyond a reasonable doubt. The victim is not a party to the criminal proceedings.
- Family cases deal with legal issues within a family, such as separation, divorce, parenting, child support, partner support, spousal support and dividing property.

In civil cases, the judge can award you money (called **damages**) as compensation for the wrong committed against you. The person who committed the harm, or who is liable for the harm, pays the damages.

The people or businesses involved in litigation are called the **parties**.

Getting a Restraining Order

A restraining order is a type of protection order.

You can apply to the Court of King's Bench for a restraining order. You must show that you suffered vexatious (very annoying or frustrating) conduct. You can get a restraining order against anyone. You are the **applicant** and the person who caused harm is the **respondent**.

In a restraining order, the court can order the respondent to:

- stay away from your home, workplace or other place you regularly go
- stop harassing, watching, following, phoning or interfering with you, directly or indirectly

The court cannot order the respondent to move out of a residence where they have a right to live, even if you live there too.

For more information about restraining orders in a family situation, see CPLEA's tip sheet **What you need to know about ... Restraining Orders**.

For help finding forms to apply for a restraining order in all situations, contact **Court and Justice Services**.

Emergency Restraining Orders

You can get a restraining order *without notice* to the respondent. The court will hold a review hearing within two weeks of granting the restraining order. At the review hearing, the respondent can respond to the allegations you make. The court can extend or cancel the restraining order.

How to get:

1. Complete the necessary court forms – usually an application and an affidavit.
2. File the application and affidavit at the courthouse.
3. Appear in Justice Chambers to ask for the restraining order. Take a copy of a partially completed Restraining Order Without Notice form and give it to the justice.
4. If the justice grants the restraining order, file it at the courthouse.
5. Have a process server or other person serve a copy of the filed order on the respondent.
6. Complete and file an Affidavit of Service form to prove that the respondent received a copy of the order.
7. Give copies of the filed order and filed Affidavit of Service to local police or RCMP (if they do not already have it).

An affidavit is a written statement made under oath.

Non-emergency Restraining Orders

You must give the respondent notice of your court application at least 10 days before the court hearing date. This means the respondent can come to the court hearing and tell their story.

How to get:

1. Complete the necessary court forms – usually an application and an affidavit.
2. File the application and affidavit at courthouse. The clerk will schedule a court hearing.
3. Serve a copy of the filed application and affidavit on the respondent. The respondent must receive the documents at least 10 days before the court date.
4. Complete and file an Affidavit of Service form to prove that the respondent received a copy of the order and in time.
5. Appear in court on the scheduled date. Take a copy of the partially completed Restraining Order With Notice form and give it to the justice.
6. If the justice grants the restraining order, file it at the courthouse.
7. Have a process server or other person serve a copy of the filed order on the respondent.
8. Complete and file an Affidavit of Service form to prove that the respondent received a copy of the order.
9. Give copies of the filed order and filed Affidavit of Service to local police or RCMP (if they do not already have it).

Filing a Lawsuit

If you have experienced sexual violence, you may be able to file a lawsuit against the person who caused harm. You are the **plaintiff** and they are the **defendant**.

You can file a civil lawsuit regardless of criminal charges against the person who caused harm.

You can start a civil lawsuit at any time but will usually have to wait until criminal proceedings are over before you take more steps in the lawsuit. Sometimes this is several years after you experienced the sexual violence.

Deadlines

The strict deadlines about when you must start the claim do not apply to most cases about sexual violence.

There is no deadline to file:

- Claims that relate to a sexual assault or battery
- Claims that relate to any sexual misconduct, other than sexual assault or battery, if at the time of the misconduct any of the following were true:
 - you were a minor
 - you were in an intimate relationship with the person who caused harm
 - you were dependent (financially, emotionally, physically or otherwise) on the person who caused harm
 - you were under a disability (as defined in the Act)

For most other claims, Alberta's *Limitations Act* says a plaintiff has two years to start a lawsuit. Usually, the two years starts running as soon as the action that caused harm to the plaintiff occurred. If you think you are out of time to start a lawsuit, talk to a lawyer immediately.

Types of Claims

You can file a lawsuit against someone who committed a **tort** against you. Torts are laws created by our courts to address harm caused by one party against another. If someone commits a tort against you and you suffer harm, the court can decide that the person is liable to you.

Examples of torts related to sexual violence:

- **Sexual battery** is physical contact of a sexual nature that is harmful and offensive. The person who caused harm must have intended to touch you. It cannot be accidental contact.
- **Sexual assault** in civil cases is different than in criminal cases. Sexual assault in civil cases means someone threatening to physically contact you without your consent. You must have a reasonable belief that the harm was imminent. If they physically contact you, that is sexual battery.
- **False imprisonment** is someone depriving you of freedom and detaining you without any lawful authority.

Sharing intimate images without consent is also illegal. You can file a lawsuit if this happens to you. There are many torts related to this act. Talk to a lawyer to decide which torts apply to your situation.

Possible torts include:

- appropriation of likeness
- breach of confidence
- breach of fiduciary duty (a legal obligation of one person to act in the best interests of another person)
- copyright
- defamation
- extortion or intimidation
- harassment
- intentional infliction of mental suffering

- intrusion upon seclusion
- publication of embarrassing or private facts

You must prove to the court that the person who caused harm (the defendant) committed the tort on a **balance of probabilities**. This means the judge must believe the event occurred more likely than not.

Evidence

To be successful in your lawsuit, you will need evidence of the sexual violence and how it affected you. Your evidence must be material and relevant. Material means that it helps prove what you need to prove.

Examples of evidence are:

- Medical records or opinions to show how the sexual violence physically, emotionally, and mentally affected you
- Financial records to show how the sexual violence affected your finances
- Copies of text messages, emails, photos, etc. that relate to the sexual violence
- Statements from friends and family about how the sexual violence affected you

Damages

If you prove your case, the judge can award you damages. That is, the judge can order that the defendant pay you money for your harm and losses.

Examples of damages you can claim are:

- **General damages for pain and suffering**
The court calculates the amount of damages for pain and suffering based on what judges in the past have awarded people in situations similar to yours. There is a cap on pain and suffering damages in Canada, for the most serious cases. It changes each year based on inflation and cost of living. It was about \$393,700 as of January 2021.
- **Loss of income**
If your experience has affected your ability to work or go to school, you can ask the defendant to pay you income you lost. You can also ask for money you could have earned in the future but will not because of the harm. For example, if the harm has affected your ability to finish school and start your

Publishing intimate images without consent is also a criminal offence. See Reporting Sexual Violence to Police for more information.

career, you can ask for future lost income. You must prove your past lost income and convince the judge it is more likely than not that you will lose future income.

- **Expenses for medical treatments**

If you have paid for medical treatments, such as counselling, to deal with the harm you experienced, you can ask the court to order the defendant to pay you back these expenses. If you think that you will need more medical treatments in the future, you can ask the defendant for these expenses too. You must have proof of your medical expenses, such as receipts or a doctor's opinion.

- **Punitive damages**

These damages mean to punish the defendant for their behaviour. The court does not award these types of damages very often.

You must have proof of the damages you are claiming. The damages you are asking for must be reasonable and connected to the harm you experienced.

Judgment

If you are successful in proving your case, the judge will issue a judgment. This is a court order setting out how much money the defendant must pay you. Once you have a judgment, you will have to take steps to enforce the judgment (get paid). Sometimes this can be difficult and take time if the defendant does not have enough money or assets to pay the amount. For more information on collecting and enforcing your judgment, see the Alberta Court booklet called **Getting and Enforcing Your Judgment in Alberta** at: <http://bit.ly/3aN2jAL>

Costs

The judge can also award costs to the successful party. Costs reimburse the more successful party for having to go through the court process to get a resolution. Costs that the judge might allow are set out in a schedule to the *Alberta Rules of Court*. They include court fees and out-of-pocket

expenses (called disbursements). Costs can sometimes include the successful party's legal fees. The least successful party does not automatically pay costs to the most successful party. The judge can decide what costs will be.

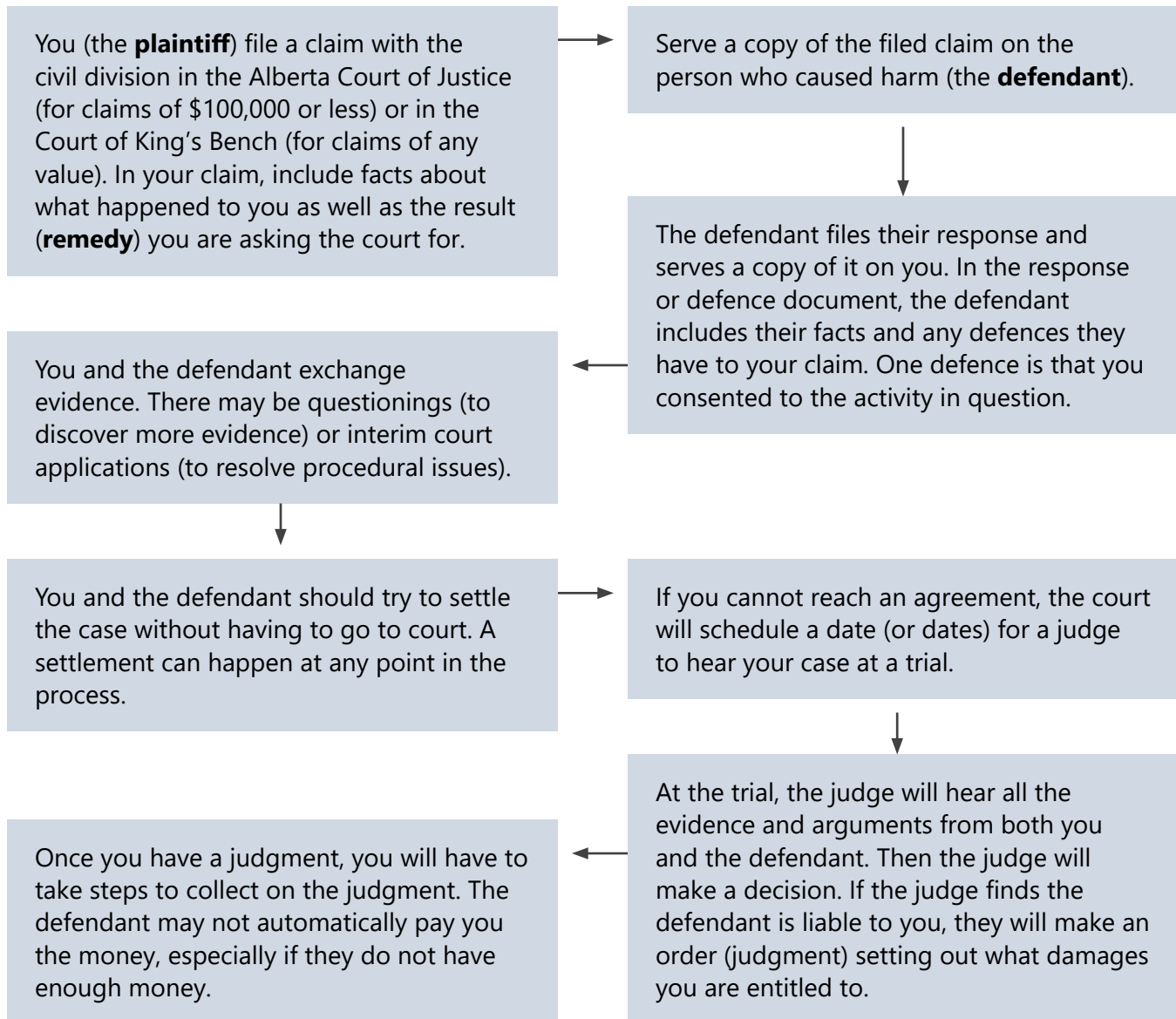
SETTLEMENT OFFERS AND COSTS

If you do not accept a reasonable settlement offer from the defendant and instead your case goes to trial, you may have to pay the defendant's costs if you are less successful in court. For example, the defendant offers you \$20,000 and you refuse, but then the judge awards you \$15,000. While you were successful overall in proving your case, you may have to pay the defendant's costs as a penalty for not accepting the settlement offer and not avoiding the cost of going to trial. You may have to pay *double* costs if the judge dismisses the case. For example, the defendant offers you \$20,000 to settle the case and you refuse. At trial, the judge dismisses the case, meaning they rule in favour of the defendant.

If the defendant does not accept a reasonable settlement offer from you and instead your case goes to trial, the defendant may have to pay double *your* costs if the judge awards you the same or more than the offer amount. For example, you offer to settle the case for \$20,000 and the defendant refuses. At trial, the judge awards you \$25,000. The judge can order the defendant to pay double costs as a penalty for not accepting the settlement offer and not avoiding the cost of going to trial.

These rules apply to costs for steps taken after serving the settlement offer.

The Civil Court Process



For more information on processes in civil court, including affidavits and serving documents, see CPLEA's series of tip sheets called **Going to Court**. These tip sheets and more are freely available at www.cplea.ca/resources/.

COURTS IN ALBERTA

Alberta has three courts:

1. The **Alberta Court of Justice** is the lowest court and hears cases for less serious criminal offences, most family matters, civil issues valued at \$100,000 or less, and traffic offences. Alberta Court of Justice is easier to navigate for people without lawyers.
2. The **Court of King's Bench** is the superior court and hears cases the Alberta Court of Justice cannot. The Court of King's Bench has lots of procedural rules so more people are represented by lawyers.
3. The **Court of Appeal** is the appeal court and hears appeals (challenges) of decisions from the Court of King's Bench.

The **Supreme Court of Canada** is the highest court in Canada and hears appeals from all appeal courts across Canada.

Civil lawsuits can take several months or several years to resolve. It all depends on how complicated the issue is and how willing the parties are to settle the dispute. Many disputes settle at some point. **Settling is not giving up.** Settling is both parties agreeing to resolve the issue without going to court.

Going to trial is not a pleasant experience for anyone involved. You will have to tell the judge about your experience. The defendant or their lawyer will cross-examine you. They will ask questions to try to show the defendant is not liable for all or some of the damages you are claiming.

Remember, whatever happens during the court process does not take away from your experience. A negative outcome does not take away from what happened to you.

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The other tip sheets in this series are available at:
www.cplea.ca/sexual-violence/

Sexual Assault Centre of Edmonton

SACE supports children, youth, and adults who have experienced sexual abuse or assault, and educates the public about sexual violence.

www.sace.ca

Elizabeth Fry Northern Alberta

EFry supports women and girls who are or may be at risk of becoming criminalized.

www.efrynorthernalberta.com

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