



Emergency
Intervention Orders

**Information
for Respondents**

This booklet explains to Respondents how
Emergency Intervention Orders are made,
whether they can be changed, and how to do so.

This booklet was produced by the Public Legal Education and Information Service of New Brunswick (PLEIS-NB). PLEIS-NB is a non-profit, charitable organization whose goal is to educate and inform the public about the law and legal processes. PLEIS-NB receives core funding and in-kind support from the Department of Justice Canada, the New Brunswick Law Foundation, and the New Brunswick Office of the Attorney General.

This booklet was produced with the collaboration and funding of the Department of Justice and Public Safety. We also wish to acknowledge the valuable contribution of all of those stakeholders who reviewed the booklet and provided insights on how to make it accessible to the public.

This booklet does not contain a complete statement of the law in this area and laws change from time to time. Anyone needing advice on his or her specific legal position should consult a lawyer.

Jointly published by:



Public Legal Education
and Information Service
of New Brunswick

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I. General information for Respondents

If you were served with an **Emergency Intervention Order (EIO)** you are referred to as the **“Respondent”**. Carefully read the Order, so you are aware of the conditions. You must obey the conditions in the Order or face serious consequences.

Why was I served with an Emergency Intervention Order?

You were served with an **Emergency Intervention Order** because your current or former intimate partner filled out an application under the *Intimate Partner Violence Intervention Act* stating that there was abuse or violence in the relationship that is serious and urgent.

The application is considered an emergency situation and handled on an *ex parte* basis – meaning the Respondent is not present for the hearing.

Who granted the Order to the Applicant?

An experienced lawyer with special training, called an **Emergency Adjudicative Officer (EAO)** reviewed the application. They held a telephone hearing under oath or solemn affirmation with the applicant to decide if there was enough evidence to grant an Order. When the EAO grants an Order, they must send it to a Judge at the Court of Queen’s Bench: Family Division, for review.

Who can I meet with for an explanation of the Order?

You can make an appointment with a Family Advice Lawyer by calling **1-855-266-0266** for up to one hour of legal information.

What happens when the Judge reviews the Order?

Within 5 (five) business days of receiving it, the Judge will decide to:

- Confirm the Order made by the Adjudicative Officer;
- Change the Order (referred to as varying the order), for example, by deleting or adding some provisions or changing the time frame); or,
- Hold a hearing.

At this time, the Judge cannot set aside the Order.

Is the Respondent notified if the Judge confirms or changes the Order after it has been reviewed?

Yes. If during the review, the Judge confirms the Order, court staff will notify both parties by mail or phone. You can go to the court to pick up a copy of the confirmed Order.

If the Judge changes the Order made by the EAO a Sheriff will serve you with a copy of the changed Order.

Why would a Judge ask for a hearing?

The Judge may have questions about what happened between you and the Applicant, or about the evidence that was used with the application. The Judge may require more information to decide if the Order granted by the EAO was justified. These types of "Judge review hearings" are not scheduled for every case.

What evidence was used by the Applicant to get the Emergency Intervention Order?

The evidence provided for an Order comes in the form of sworn statements made by the Applicant in the Application. This evidence is presented at a telephone hearing under oath or solemn affirmation with the Applicant,

the Emergency Adjudicative Officer and the designated "assister". The evidence is kept in a Court file at the courthouse where the Order was filed.

Can I access evidence in the Court file?

You have the right to apply to the Court of Queen's Bench - Family Division for a recording of the telephone hearing and a copy of the Application and respondent's information sheet. You can go in person to the court office at the location set out on the front page of the Order. You must fill out a request form if you want a CD of the recorded hearing. You may be charged a fee if you wish to have any documents photocopied. Unless restricted by court order, applications made to the court are generally public records. For safety reasons, certain information may be removed, such as the applicants address.

It is a good idea to wait a few days after being served the Order before you go to the court office. That gives time for court staff to receive or process the documents, especially if an order was granted and served over the weekend.

What happens if the Judge holds a review hearing?

You will receive a summons to appear before the Judge at the hearing to answer the Judge's questions. The Applicant is given notice of the hearing and may attend, but is not required to. The Judge will only review the evidence brought forward during the initial phone hearing. It will be up to the **Respondent to prove that the Order should not be confirmed by the Judge.**

Do I have to attend the hearing?

Yes, the notice you receive of the Judge review hearing is a summons and you must attend the hearing. The Judge may also choose to confirm the Order in your absence.

Can I get legal advice before the hearing?

You have the right to seek advice and/or representation from a lawyer at any point during this process. If you cannot afford a private lawyer, you can speak to duty counsel from Legal Aid which is available at the courthouse on the day of the hearing.

Do I need to have a lawyer represent me at the hearing?

It is wise to get legal advice about your situation, but you do not have to be represented by a lawyer.

II. How Does a Respondent Change an Order?

What can I do to change the Order or ask that it be set aside?

You can ask the court to change or set aside an Emergency Intervention Order, by applying to the Court of Queen's Bench, Family Division.

NOTE

To "set aside" the order means that it is no longer in effect.

How do I change the Order?

You must apply to the Court and request a hearing before a Court of Queen's Bench Judge. The form you fill out depends on where the EIO application was filed.

- If you are filing in **Moncton, Fredericton, Edmundston, Woodstock, or Saint John**, fill out a **Notice of Motion (Form 37A)**
- If you are filing in **Bathurst, Miramichi, or Campbellton**, fill out a **Notice of Application (Form 73A)** and an **Affidavit**.

In Saint John and Moncton, parties may need to fill out an Application (Form 81A) in addition to Form 37A if they wish to bring in new claims of their own.

You must file the completed form at the Court of Queen's Bench - Family Division. You can also apply for Family Legal Aid if you cannot afford a lawyer.

How long after being served do I have to apply to change the Order?

You have **21 days** after the date you were served with the Order to apply to the court to vary or set aside the Order. After 21 days you can apply to change or set aside the Order if there has been a material change in circumstances.

If you can't afford a lawyer, you can apply to Family Legal Aid for representation at a hearing concerning an EIO. To qualify for Legal Aid, you must meet their financial criteria.

Will there be a hearing if I apply to change the Order?

Yes, if you file a Notice of Motion or Notice of Application to vary or set aside an EIO, along with all necessary supporting documents, there will be a hearing.

At the hearing, you will have to prove that the EIO should be varied or set aside. You will be permitted to refer to the evidence that was used at the original telephone hearing with the EAO.

What happens after the Judge hears the evidence?

After hearing the evidence, the Judge may

- Confirm the Order;
- Make changes to or set aside any part of the Order;
- Add a provision to the Order;
- Decrease the period of time the Order is meant to last;
- Extend the period of time the Order is meant to last by up to 180 days;
- Set aside the Order; or
- Make an Order with respect to any item that was seized under the EIO.

What if the Applicant and I get back together? Who should apply to change the order?

If you and your partner decide to reconcile and the EIO is no longer needed, either of you can apply to set the Order aside. However, if the Judge is not satisfied that the Applicant is agreeing to set the Order aside voluntarily, they can adjourn the hearing to allow the Applicant to get legal advice or other necessary support.

For more information and to download fillable forms, go to:
www.familylawnb.ca

III. Some Common Questions Asked by Respondents

What happens if I break a condition in the order? Will the police arrest me?

Yes. The police can arrest you without a warrant for breaching a condition of an EIO.

If you break any of the conditions you could be subject to punishment (under Part II of the *Provincial Offences Procedure Act*). Penalties for violating an Emergency Intervention Order may include fines between \$500 and \$200,000 or higher and jail.

The police and the Provincial Firearms Office for the province are both provided with notice of the EIO.

The police can enforce an Emergency Intervention Order, and they can remove you from the residence if there is an exclusive occupation provision.

Will I have a criminal record because of this order?

No, an EIO is a civil remedy and is not part of the criminal process. It will not result in a criminal record. Breaking the conditions of an EIO is, however, is quasi-criminal and serious.

If the Order gives the Applicant exclusive occupation of the home, can I go and get my things?

If there are things in the home you need, such as clothes or work supplies, you should apply to the court to vary the EIO. You could ask to have a police officer or sheriff supervise the removal of your specific things from the home. If you just show up to get your belongings you would be breaching the Order if it indicated that you are not to go near the home or the Applicant. You could be arrested for breaching the Order.

Remember, the EIO is temporary. The applicant is permitted to stay in residence temporarily. It does not in any way affect the ownership of the home or property.

If the Order gives the Applicant sole interim (temporary) custody of the children, will I get to see them?

It depends on what the Order says. If it gives the Applicant temporary custody and states that you are to stay away from the Applicant or children, you will have to obey it.

If the conditions of the EIO conflict with another order made under the *Family Services Act* or the *Divorce Act*, the conditions of the EIO take priority

where they are necessary for the safety of the applicant and any child. A **Child Protection Order**, however, will take priority over an EIO.

If you wish to spend time with your children, you may have to apply to the court to vary the Order. You should get legal advice about your family law situation.



For general information on related family law matters contact:

Toll-free Family Law Information Line:

Call **1-888-236-2444**

Visit www.familylawnb.ca

or www.legal-info-legale.nb.ca

To receive up to an hour of free legal advice, you can contact the **Family Advice Lawyer service:**

New Brunswick (toll-free) 1-855-266-0266

You can also seek help from a private lawyer to change an EIO or apply to **New Brunswick Legal Aid** for representation.