

# 怎樣根據《家庭及同居關係暴力條例》 申請強制令

## How to Apply for Injunctions under the Domestic and Cohabitation Relationships Violence Ordinance





# 怎樣根據《家庭及同居關係暴力條例》 (香港法例第189章)申請強制令

## 誰可以根據《家庭及同居關係暴力條例》提出申請？

- (i) 如果你曾被你的配偶或前配偶（“配偶/前配偶”）騷擾；
- (ii) 如果你曾被你同居關係中的異性伴侶或前伴侶（“伴侶/前伴侶”）騷擾；
- (iii) 如果你曾被下文所界定的親屬（“親屬”）騷擾；
- (iv) 如果一名未成年人（指未滿18歲的人）（不論是你或你配偶/前配偶/伴侶/前伴侶的親生子女、領養子女或繼子女）或任何與你同住的未成年人（“指明未成年人”），曾被你的配偶/前配偶/伴侶/前伴侶騷擾；

你可以向家事法庭申請針對你的配偶/前配偶/伴侶/前伴侶/親屬（下稱“另一方”）的強制令。

無論你是否正在提起或已經提起任何其他的婚姻或家事法律程序，也可以提出這項申請。

如你本人為未成年人而打算申請強制令，必須經由“起訴監護人”代為提出申請。起訴監護人須由律師代表或由法定代表律師擔任。因此，你應該在切實可行的範圍內，盡快聯絡律師或法定代表律師。

## 誰是“親屬”？

“親屬”是指：

- (a) 申請人的父親、母親、祖父母或外祖父母(不論是在親生關係或領養關係之下的)；
- (b) 申請人的繼父、繼母、繼祖父母或繼外祖父母；
- (c) 申請人的配偶的父親或配偶的母親，而該父親或母親是該申請人的配偶的親生父母、領養父母或繼父母；
- (d) 申請人的配偶的祖父母或配偶的外祖父母，而該祖父母或外祖父母是該申請人的配偶的親生祖父母、親生外祖父母、領養祖父母、領養外祖父母、繼祖父母或繼外祖父母；
- (e) 申請人的兒子、女兒、孫、孫女、外孫或外孫女(不論是在親生關係或領養關係之下的)；

- (f) 申請人的繼子、繼女、繼孫、繼孫女、繼外孫或繼外孫女；
- (g) 申請人的女婿或媳婦，而該女婿或媳婦是該申請人的親生子女、領養子女或繼子女的配偶；
- (h) 申請人的孫女婿、孫媳婦、外孫女婿或外孫媳婦，而該孫女婿、孫媳婦、外孫女婿或外孫媳婦是該申請人的親生孫、親生外孫、領養孫、領養外孫、繼孫或繼外孫的配偶；
- (i) 申請人的兄弟或姊妹(不論是全血親、半血親或憑藉領養關係)；
- (j) 申請人的配偶的兄弟或姊妹(不論是全血親、半血親或憑藉領養關係)；
- (k) 申請人的繼兄弟或繼姊妹；
- (l) 申請人的配偶的繼兄弟或繼姊妹；
- (m) 申請人的伯父母、叔父母、舅父母、姑丈、姑母、姨丈、姨母、姪兒、姪女、甥、甥女、表兄弟、表姊妹、堂兄弟或堂姊妹(不論是全血親、半血親或憑藉領養關係)；

- (n) 申請人的配偶的伯父母、叔父母、舅父母、姑丈、姑母、姨丈、姨母、姪兒、姪女、甥、甥女、表兄弟、表姊妹、堂兄弟或堂姊妹（不論是全血親、半血親或憑藉領養關係）；
- (o) 在(i)、(j)、(k)、(l)、(m)或(n)段中所述的任何人的配偶。

## 可申請的命令

### 禁制騷擾令

法庭如果信納另一方曾經騷擾你及/或指明未成年人，可發出載有以下全部或其中任何條文的強制令：

- (a) 禁制另一方騷擾你的條文，
- (b) 禁制另一方騷擾指明未成年人的條文，

## 驅逐令

(c) (i) 如果你曾被另一方騷擾，強制令禁止另一方進入或留在以下地方的條文：

(A) 你的居所；

(B) 你的居所的指明部分；或

(C) 一處指明的地方(不論你的居所是否位於該地方內)。

(不論居所是否你和另一方的共同居所或婚姻居所，這項條文同樣適用。)

(ii) 如果指明未成年人曾被另一方騷擾，強制令禁止另一方進入或留在以下地方的條文：

(A) 指明未成年人的居所；

(B) 指明未成年人的居所的指明部分；或

(C) 一處指明的地方(不論指明未成年人居所是否位於該地方內)。

(不論居所是否指明未成年人和另一方的共同居所，這項條文同樣適用。)

## 重返令

- (d) 向另一方作出以下規定的條文：
- (i) 如果你與另一方同住，另一方必須准許你進入及留在你們的共同居所或婚姻居所內，或共同居所或婚姻居所的指明部分；
  - (ii) 如果指明未成年人與另一方同住，另一方必須准許指明未成年人進入及留在他們的共同居所內，或共同居所中的指明部分。

一般而言，載有上述(a)和(b)項條文的命令稱為“禁制騷擾令”，而載有上述(c)和(d)項條文的命令則分別稱為“驅逐令”和“重返令”。

上文(c)(i)(B)、(c)(ii)(B)、(d)(i)和(d)(ii)段中所述的居所/共同居所/婚姻居所中的“指明部分”，例如是睡房。

上文(c)(i)(C)和(c)(ii)(C)段中所述“指明地方”的例子包括：你或指明未成年人居住的大廈大堂、大廈所處的屋苑、工作地方或學校。



## 參與計劃令

在法庭發出禁制騷擾令的情況下，你可以要求法庭發出命令，規定另一方參與一個目的為改變導致發出強制令的態度及行為，並獲社會福利署署長核准和安排的任何計劃。

## 更改或暫停執行管養令/探視令

如果你為指明未成年人向法庭申請批出載有驅逐令的強制令而獲得批准，但在此之前，法庭曾作出命令給予另一方指明未成年人的管養權或探視權，而這項命令在法庭考慮你的強制令申請時仍然有效，則你可向法庭申請更改或暫停執行該項命令，方式則由法庭視乎需要而決定。

在考慮是否更改或暫停執行現行的管養令/探視令時，法庭必須以未成年人的福利為首要考慮事項，而在考慮這事項時須就下列兩項因素作出適當考慮：

- (i) 指明未成年人的意願(如果在顧及指明未成年人的年齡及理解能力，以及有關個案的情況後，考慮他/她的意願是切實可行的)；以及
- (ii) 任何關鍵性資料，包括聆訊進行時社會福利署署長備呈法院的任何報告。

上述更改或暫停執行的命令在強制令的有效期限屆滿時停止生效。

## 申請程序

你必須親自前往家事法庭登記處提交強制令申請書。如果你已經提起或將會同時提起其他的婚姻或家事法律程序，除非另一方並非該法律程序的與訟一方（例如有關法律程序涉及你的配偶，而強制令申請只涉及一位親屬），否則的話，你便應在該法律程序中發出傳票以申請強制令。如其他情況下，你則可憑藉原訴傳票提出新的申請。

在一般情況下，在發出傳召訴訟各方的傳票或原訴傳票後，有關傳票必須送達另一方。傳票發出後，法庭會擇定聆訊日期，你必須如期出席聆訊。

如果情況緊急，你可以在給予或不給予另一方通知的情況下發出單方面傳票，而無須把有關的傳票送達予另一方。傳票發出後，家事法庭登記處會在切實可行的範圍內，盡快安排法官進行聆訊。

在發出傳票時，你必須同時提交支持申請的誓詞/誓章。

你也應該向法官呈交一份載有所尋求的補救方法的草擬命令。如果你要求更改或暫停執行任何現行的管養令/探視令，必須在強制令內附上一份註明更改詳情的管養令/探視令的副本。

如果最初的強制令是憑藉單方面傳票(無論有沒有通知另一方)取得的，你須在其後不久發出傳召訴訟各方的傳票。傳召訴訟各方的傳票須與強制令一併送達予另一方。登記處會定出提訊日，你和另一方均須出席提訊，屆時法庭將決定該項單方面強制令應否繼續維持。

## 申請“禁制騷擾令”所需資料

在申請“禁制騷擾令”時，你必須在支持申請的誓詞/誓章中，提供有關的騷擾行為的全部詳情及相關資料。

如有任何照片、醫療/醫院報告或其他足以證明你的指稱的文件證據，應予夾附於你的誓詞/誓章內。

## 申請“驅逐令”或“重返令”所需資料

### 如果另一方是你的配偶/前配偶/同居關係中的伴侶/前伴侶

當向上述任何一項身分的另一方提出“驅逐令/重返令”的申請時，你同樣必須在支持申請的誓詞/誓章中，提供有關騷擾行為的所有詳情及相關資料，包括充分的詳情以供法庭考慮下列事宜：

- (i) 雙方對另一方的行為或其他行為，
- (ii) 雙方的各自需要及經濟能力，
- (iii) 指明未成年人的需要，以及
- (iv) 該個案的所有情況。

此外，支持申請的誓詞/誓章一般包括以下詳情：

- 關於共同居所/婚姻居所的所有權及佔用權的證據
- 雙方實際上不可能在同一地方居住的理由
- 是否有另一居所可供你、指明未成年人或另一方居住

如果你打算向法庭申請“驅逐令/重返令”，你必須使法庭信納，鑒於你和另一方的持久關係以及就整體的情況而言，法庭發出該強制令是適當的。你必須在支持申請的誓詞/誓章中，提供你倆關係的詳情及/或證據。

## 如果另一方是親屬

如果你的“驅逐令/重返令”申請所針對的另一方是親屬，你必須在你的誓詞/誓章中提供以下詳情：

- (如果你和另一方居於同一處)
  - (i) 你和另一方的共同居所的法定權益或實益權益由誰人持有；或
  - (ii) 你和另一方的共同居所的合約權利或法定權利由誰人享有。
- (如果你和另一方居於同一處) 強制令對你、另一方及與你們居於同一處的其他家庭成員之間的關係的影響
- 雙方對另一方的行為或其他行為
- 雙方的各自需要及經濟能力
- 該個案的所有情況

一般來說，在申請“驅逐令/重返令”時，除非給予通知是不切實際或危險的，否則你應該給予另一方通知。在特殊

情況下，例如法庭經衡量相對的可能性後，認為如不即時發出命令，你或指明未成年人會受到傷害的話，法庭就可以在另一方未接獲通知的情況下，應單方面傳票的申請而發出“驅逐令/重返令”。在這種情況下發出的命令，可能只在極短的期限(例如一、兩天)內有效。

驅逐令/重返令在法庭認為適當的時限內有效，但有效期不得超過24個月。

法庭可以因應申請，在強制令有效期內延長載有驅逐令/重返令的強制令的有效期，唯不可延長至超過該強制令發出之日的第二個周年日。

## 申請更改或暫停執行現行的管養令/探視令時所需資料

你需提供有關的管養令/探視令的副本，並列出你申請更改或暫停執行的條款及說明理由。

## “逮捕授權書”

凡在法庭發出的強制令中載有：

- (i) 禁止任何人對另一人(“受保護的人”)施用暴力的

條文，或

- (ii) 驅逐令，
  - (a) 法庭如信納另一方已導致該名受保護的人的身體受傷害；或
  - (b) 法庭如合理地相信另一方相當可能會導致該名受保護的人的身體受傷害，

則可在強制令中附上“逮捕授權書”。

附於強制令中的逮捕授權書會在法庭認為適當的期限(不超過24個月)內有效，並在強制令有效期屆滿時失效。

法庭可因應申請，在強制令的有效期內延長逮捕授權書的有效期，唯不可延長至超過該強制令發出之日的第二個周年日。

如果法庭發出的強制令附上逮捕授權書，警務人員無需持有手令也可逮捕任何他們合理地懷疑違反強制令的人。逮捕的理由可以是因為該人施用暴力，或是因為該人進入強制令所指明的任何處所或地方。在進行逮捕時，警方擁所有必需的權力，包括使用合理武力進入任何處所或地方的權力。

如果你打算向法庭申請在強制令中附加逮捕授權書，便須在支持申請的誓詞/誓章中提供證明另一方曾使你的身體受到傷害的證據，例如醫療/醫院報告、證明傷勢的照片、警方報告等。如果你不曾受到身體的傷害，便須列出理由解釋你為何相信另一方相當可能會使你的身體受到傷害。

如果你打算向法庭申請在強制令中附加逮捕授權書，你必須使法庭信納，鑒於你倆關係持久以及就整體的情況而言，法庭附加逮捕授權書是適當的。你必須在支持申請的誓詞/誓章中提供你倆關係的詳情及/或證據。

## 如何送達強制令

如法庭發出強制令，你須把強制令面交送達予另一方，除非法庭另有指示，則作別論。

你可以要求法庭執達主任代你把強制令及任何有關的文件送達予另一方。

以下人士須把逮捕授權書的副本，或與逮捕授權書相關的命令的副本，送達警務處處長：

- (i) 高等法院司法常務官，或
- (ii) 獲發出該逮捕授權書或命令的申請人的律師。



任何被警方根據逮捕授權書逮捕的人，須在被逮捕翌日午夜前被帶到家事法庭。

## 何處可以取得法律意見

你在提出申請前應徵詢法律意見，這對你會有所幫助。你可以考慮使用由法律援助署提供的法律援助計劃服務（電話：2537 7677），欲知詳情，可參閱《怎樣申請民事訴訟的法律援助》的單張。各法院、法律援助署辦事處及民政事務處公眾諮詢服務中心均備有上述單張供市民索閱。

請注意，家事法庭登記處的職員雖然會盡力就關於申請程序的事宜向你提供協助，但他們不是律師，不可提供法律意見，也不可代你填寫申請所需的表格。

## 須填寫的表格

申請強制令須填寫以下表格：

- 傳召訴訟各方的原訴傳票 (如沒有其他待決的婚姻/家事法律程序或另一方為親屬)
- 傳召訴訟各方的傳票 (如另有待決的法律程序)

- 單方面傳票(無論是否有其他待決的婚姻/家事法律程序，但祇適用於緊急的申請，例如有人面對即將受傷害的危險)
- 支持申請的誓詞/誓章
- 載有申請人所要求的濟助的草擬命令
- 在把傳票面交送達後，送達人須提交誓章以證明傳票已以上述方式送達。

上述表格可以向家事法庭登記處索取。表格可以用中文或英文填寫。請把填妥的表格送交家事法庭登記處存檔。

## 須繳付的費用

原訴傳票/ 單方面傳票的存檔費是港幣630元。

傳召訴訟各方的傳票的存檔費是港幣630元。

單方面傳票/傳召訴訟各方的傳票的存檔費是港幣630元。

如你要求法庭執達主任把任何文件送達答辯人，每份文件的送達費是港幣72元。

## 如何聯絡我們

### 家事法庭登記處

地址： 香港灣仔港灣道12號灣仔法院大樓M2樓

電話： 2840 1218

傳真： 2523 9170

### 辦公時間

星期一至星期五 上午八時四十五分至下午一時

下午二時至下午五時三十分

(星期六、日及公眾假日休息)

- 當八號或以上熱帶氣旋信號或黑色暴雨警告信號發出時，家事法庭及家事法庭登記處將會關閉。
- 如有關信號於星期一至五上午六時或之前改為較低的信號或取消，法院將於當天早上恢復進行聆訊，而家事法庭登記處亦會在早上如常開放。
- 如有關信號於星期一至五的上午六時至十一時期間或在上午十一時，改為較低的信號或取消，法院將於下午二時三十分恢復進行聆訊，而家事法庭登記處亦於下午在慣常時間重開。

- 如有關信號於星期一至五上午十一時後改為較低的信號或取消，法院將於當天全日休庭，並於隨後一天（但星期六及公眾假日除外）上午九時三十分恢復進行聆訊。
- 如有關信號於星期一至五上午十一時後改為較低的信號或取消，若當時情況許可，家事法庭登記處或會於當天下午在切實可行的範圍內盡早重開。然而，如有關信號於星期一至五家事法庭登記處之正常關閉時間前2小時或少於2小時才改為較低的信號或取消，家事法庭登記處便會繼續關閉。
- 請留意司法機構在電台及電視台有關法院恢復進行聆訊及家事法庭登記處重開時間的公布，或可於公布發出後，在政府的新聞公報網頁<http://www.info.gov.hk/gia/general/ctoday.htm>閱覽。你亦可致電家事法庭登記處（電話：2840 1218）查詢。

## 當值法官

法院每星期都會安排一位當值法官處理緊急申請。

司法機構  
二〇一〇年一月  
(第一版)

# How to Apply for Injunctions Under the Domestic and Cohabitation Relationships Violence Ordinance (Cap 189)

## Who may apply under the Domestic and Cohabitation Relationships Violence Ordinance?

- (i) If you are a person who has been molested by your spouse or former spouse (“spouse/ former spouse”);
- (ii) If you are a person who has been molested by your partner or former partner in a cohabitation relationship, who is of opposite sex (“partner/ former partner”);
- (iii) If you are a person who has been molested by a relative (“relative”) as hereinafter defined;
- (iv) If a minor (whether a natural child, adoptive child or step-child of yours or of your spouse/ former spouse/ partner/ former partner) or any minor living with you, who is under the age of 18 years (“the Specified Minor”) and has been molested by your spouse/ former spouse/ partner/ former partner,

you may make an application to the Family Court for an injunction against your spouse/ former spouse/ partner/ former partner/ relative (hereinafter called “the Other Party”).

You may make such an application, with or without any other Matrimonial Proceedings or Family Proceedings being issued or having been issued.

If you wish to make an application for injunction and you yourself are a minor, you will have to make the application by a “Next Friend”, who must act by a solicitor, unless the Official Solicitor is acting as the Next Friend. In such a case, you are advised to contact either a solicitor or the Official Solicitor as soon as practicable.

## Who is a “relative”?

“Relative” means:

- (a) the applicant’s father, mother, grandfather or grandmother (whether natural or adoptive);
- (b) the applicant’s step-father, step-mother, step-grandfather or step-grandmother;
- (c) the applicant’s father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the applicant’s spouse;
- (d) the applicant’s grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the applicant’s spouse;
- (e) the applicant’s son, daughter, grandson or granddaughter (whether natural or adoptive);

- (f) the applicant's step-son, step-daughter, step-grandson or step-granddaughter;
- (g) the applicant's son-in-law or daughter-in-law who is the spouse of the applicant's natural child, adoptive child or step-child;
- (h) the applicant's grandson-in-law or granddaughter-in-law who is the spouse of the applicant's natural grandchild, adoptive grandchild or step-grandchild;
- (i) the applicant's brother or sister (whether of full or half blood or by virtue of adoption);
- (j) the brother or sister (whether of full or half blood or by virtue of adoption) of the applicant's spouse;
- (k) the applicant's step-brother or step-sister;
- (l) the step-brother or step-sister of the applicant's spouse;
- (m) the applicant's uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption);

- (n) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the applicant's spouse; or
- (o) the spouse of any person mentioned in paragraph (i), (j), (k), (l), (m) or (n).

## What are the Remedies?

### Non-molestation Order

If the Court is satisfied that the Other Party has molested you and/or the Specified Minor, the Court may grant an injunction containing any or all of the followings:

- (a) a provision restraining the Other Party from molesting you;
- (b) a provision restraining the Other Party from molesting the Specified Minor;



## Ouster Order

(c) (i) where you have been molested by the Other Party, a provision prohibiting the Other Party from entering or remaining in:

(A) your residence;

(B) a specified part of your residence; or

(C) a specified area whether or not your residence is in that area,

whether or not the residence is the common residence or matrimonial home of you and the Other Party;

(ii) where the Specified Minor has been molested by the Other Party, a provision prohibiting the Other Party from entering or remaining in:

(A) the residence of the Specified Minor;

(B) a specified part of the Specified Minor's residence; or

(C) a specified area whether or not the residence of the Specified Minor is in that area,

whether or not the residence is the common residence of the Specified Minor and the Other Party.

## Re-entry Order

- (d) a provision requiring the Other Party:
  - (i) where you reside with the Other Party, to permit you to enter and remain in the common residence or matrimonial home of you and the Other Party or a specified part of such common residence or matrimonial home;
  - (ii) where the Specified Minor resides with the Other Party, to permit the Specified Minor to enter and remain in the common residence of the Specified Minor and the Other Party or in a specified part of such common residence.

Orders in (a) and (b) above are commonly called “Non-molestation Orders”, and orders in (c) and (d) are commonly called respectively “Ouster Orders” and “Re-entry Orders”.

Examples of “a specified part” of the residence/ common residence/ matrimonial home referred to in (c)(i)(B)/ (c)(ii)(B)/ (d)(i)/ (d)(ii) above could be, say, a bedroom.

Examples of “a specified area” referred to in (c)(i)(C)/ (c)(ii)(C) above could be the lobby of the building where you/ the Specified Minor live, or the estate where the building is situated, or a work place, or a school.

## **Participation in Programme Order**

In the event that the Court grants you a Non-molestation Order, you may seek an order that the Other Party to participate in a programme, approved by and as arranged by the Director of Social Welfare, that is aimed at changing the attitude and behaviour that lead to the granting of such injunction.

## **Variation/ Suspension of Custody/ Access Order**

If the Court grants you an injunction containing an Ouster Order that concerns the Specified Minor, and at the time when the Court determines your application, there is in force an order which grants custody of the Specified Minor to the Other Party or an order that allows the Other Party to have access to the Specified Minor, you may apply for such order to be varied or suspended in such manner as the Court considers necessary.

In considering such variation/ suspension of an existing Custody/ Access Order, the Court shall regard the welfare of the minor as the first and paramount consideration; and in having such regard, give due consideration to:

- (i) the wishes of the Specified Minor if, having regard to the age and understanding of the Specified Minor and to the circumstances of the case, it is practicable to do so; and
- (ii) any material information, including any report of the Director of Social Welfare available to the Court at the hearing.

Such variation/ suspension shall cease to have effect upon the expiry of the validity period of the injunction.

## What are the application procedures?

You have to attend personally at the Family Court Registry to file the injunction application. If there are other Matrimonial Proceedings or Family Proceedings which have been issued or to be issued at the same time, you should apply for the injunction by way of summons under those proceedings, unless the Other Party is not already a party to the existing proceedings, e.g. the existing proceedings concerns your spouse while this application for injunction concerns a relative. In all other cases, you may issue a fresh application by way of an originating summons.

Under normal circumstances, after issuing an inter-partes summons or an originating summons, such has to be served on the Other Party. Upon issue, a hearing date will be fixed which you have to attend.

In an urgent case, you may issue an ex-parte summons either with or without notice to the Other Party. Service on the Other Party is not required. Upon issue, the Family Court Registry can make arrangement for you to see a judge as soon as practicable.

You are required to file a supporting affirmation/ affidavit at the same time when issuing the summons.

You are also expected to present to the Judge a draft order containing the remedies you seek, and if you seek a variation/ suspension of any existing Custody/ Access Order, a copy of the Custody/ Access Order endorsed with the particulars of the variation will need to be attached to the injunction.

If the initial injunction has been obtained by way of an ex-parte summons (with or without notice) to the Other Party, you have to issue an inter-partes summons shortly thereafter. This needs to be served on the Other Party together with the injunction. There will be a return date for both you and the Other Party to appear before the Court and the Court will then decide whether the ex-parte injunction should continue.

## **What information is required for a “Non-molestation Order”**

In support of the application for a Non-molestation Order, you must in your supporting affirmation/ affidavit provide all the details of the molestation and relevant information.

If there are any photographs, medical/ hospital reports or other documentary evidence in support of your allegations, you should attach them to your affirmation/ affidavit.

## What information is required for an “Ouster Order” or a “Re-entry Order”

### **Where the Other Party is a spouse/ former spouse/ partner/ former partner in a cohabitation relationship**

In the supporting affirmation/ affidavit of an application for an Ouster/ Re-entry Order against the Other Party who is one of the above, again you must provide all the details of the molestation, and all relevant information, including sufficient details to enable the Court to consider:

- (i) the conduct of the parties, both in relation to each other and otherwise;
- (ii) the parties’ respective needs and financial resources;
- (iii) the needs of the Specified Minor; and
- (iv) all the circumstances of the case.

It is further common for the details in the affirmation/ affidavit to include:

- evidence of the ownership and occupation of the common residence/ matrimonial home
- reasons why it is not practical for the parties to remain living in the same place
- whether any alternative accommodation is available to you, the Specified Minor, or the Other Party

In case you wish the Court to grant an Ouster/ Re-entry Order in the above case, you have to satisfy the Court that having regard to the permanence of your relationship with the Other Party it is appropriate in all the circumstances to grant that injunction. You will have to include

in your supporting affirmation/ affidavit details and/ or evidence of such relationship.

### **Where the Other Party is a relative**

For applications for Ouster/ Re-entry Orders against the Other Party who is a relative, you will need to provide in your affirmation/ affidavit the following details:

- (where you reside with the Other Party) who has
  - (i) the legal or beneficial interest in; or
  - (ii) the contractual or legal right to occupy,  
  
the common residence of you and the Other Party
- (where you reside with the Other Party) the impact of the injunction on the relationship between you, the Other Party and your other family members who reside with you and the Other Party
- the conduct of the parties, both in relation to each other and otherwise
- the respective needs and financial resources of the parties
- all the circumstances of the case

Normally, in an application for an Ouster/ Re-entry Order, you should give notice to the Other Party unless it is impractical or dangerous

to do so. In exceptional circumstances, if on a balance of probability, there is a risk of harm to you or the Specified Minor if an order is not made immediately, the Court may grant an Ouster/ Re-entry Order on an ex-parte summons without notice to the Other Party. Such order, if granted, may be for a very short duration i.e. perhaps only for one or two days.

An Ouster/ Re-entry Order shall have effect for a period, not exceeding 24 months, as the Court considers appropriate.

The Court may, on an application, extend the validity period of an injunction which contains an Ouster/ Re-entry Order, but only during the validity period of the injunction concerned, and such validity period may not be extended beyond the second anniversary of the date on which the injunction was granted.

### **What information do you need to provide if you wish to apply for variation/ suspension of an existing Custody/ Access Order?**

You will need to provide a copy of the Custody/ Access Order, and set out the terms you wish to vary/ suspend, and provide reasons for such variation/ suspension.

### **What is an “Authorization of Arrest”?**

Where the Court grants an injunction which contains:



- (i) a provision restraining a person from using violence against another person (“protected person”); or
  - (ii) an Ouster Order,
- (a) if the Court is satisfied that the Other Party has caused actual bodily harm to the protected person; or
  - (b) if the Court reasonably believes that the Other Party will likely cause actual bodily harm to the protected person,

the Court may attach to the injunction an “Authorization of Arrest”.

An Authorization of Arrest attached to an injunction shall have effect for a period, not exceeding 24 months, as the Court considers appropriate; and expire upon the expiry of the validity period of the injunction.

The Court may, on an application, extend the validity period of an Authorization of Arrest but only during the validity period of the injunction. The validity period of any injunction or an Authorization of Arrest may not be extended beyond the second anniversary of the date on which the injunction was granted.

If the Court grants an injunction, and attaches the order with an Authorization of Arrest, this will empower a police officer to arrest a person whom the police officer reasonably suspects of being in breach of the injunction, without a warrant of arrest. This may be because of that person's use of violence or, as the case may be, his/ her entry into any premises or area specified in the injunction. The police officer

shall have all the necessary powers including the power of entry by the use of reasonable force to effect that arrest.

If you wish the Court to attach an Authorization of Arrest to the injunction, you should include in your supporting affirmation/ affidavit such evidence of any actual bodily harm caused to you by the Other Party e.g. medical/ hospital reports/ photographs evidencing the injuries, police reports etc. or if there has not been any actual bodily harm, then you should set out the reasons why you believe that the Other Party will likely cause actual bodily harm to you.

In the case you wish the Court to attach an Authorization of Arrest to an injunction against the Other Party, you have to satisfy the Court that having regard to the permanence of your relationship with the Other Party it is appropriate in all the circumstances to attach that Authorization of Arrest. You will have to include in your supporting affirmation/ affidavit details and/ or evidence of such relationship.

## **How do you effect service of the Injunction?**

If the injunction is granted, you are required to serve it on the Other Party personally, unless otherwise directed.

You may request the Court Bailiff to serve the injunction and any related documents on your behalf.

A copy of any Authorization of Arrest or order relating to such Authorization of Arrest shall be served on the Commissioner of Police by:

- (i) the Registrar of the High Court; or
- (ii) the solicitor of the party on whose application the Authorization of Arrest or order is granted.

When a person is arrested under the Authorization of Arrest, he shall be brought before the Family Court before the expiry of the day after the day of his arrest.

## **Where can you obtain Legal Advice?**

You will find it helpful to seek legal advice before making the application. In seeking legal advice, you may wish to take advantage of the Legal Aid Scheme administered by the Legal Aid Department (Tel: 2537 7677). For details, please refer to the “How to Apply for Legal Aid in Civil Cases” leaflet which is available at all Courts, Legal Aid Department office and Public Enquiry Service Centre at District Office.

Please note that while the staff of the Family Court Registry will seek to give you every assistance relating to the application procedures, they are not lawyers and they are not permitted to offer legal advice or to fill in the required forms for you.

## **What are the Forms to fill in?**

To apply for an injunction, you need to fill in:

- an inter-partes originating summons, where there are no other pending Matrimonial/ Family Proceedings or your application is against a relative who is not already a party to any existing proceedings
- an inter-partes summons, where there are pending Matrimonial/ Family Proceedings
- an ex-parte summons (whether there are any pending proceedings or not), but only in case of an urgent application, e.g. if there is an imminent risk of harm
- a supporting affirmation/ affidavit
- a draft order containing the remedies you seek
- after personal service has been effected, an affirmation/ affidavit of personal service to be filed by the server

The above forms are available at the Family Court Registry and you may fill in the form in Chinese or in English. When you have completed them, please present them to the Family Court Registry for filing.

## What are the Fees payable?

The filing fee for an originating summons/ ex-parte summons is HK\$630.

The filing fee for an inter-partes summons is HK\$630.

The filing fee for an ex-parte summons/ inter-partes summons is HK\$630.

If you wish the Court Bailiff to serve any documents on the Other Party, the fee for service of each document is HK\$72.

## How to contact us?

Family Court Registry

Address: M2 Floor, Wanchai Law Courts, Wanchai Tower,  
12 Harbour Road, Hong Kong

Telephone: 2840 1218

Facsimile: 2523 9170

## Business Hours

Monday to Friday 8:45 a.m. to 1:00 p.m.

2:00 p.m. to 5:30 p.m.

(Closed on Saturdays, Sundays and Public Holidays)

- The Family Court and the Family Court Registry will be closed when tropical cyclone signal No. 8 or above or a black rainstorm warning signal is issued.

- Hearings will be resumed and the Family Court Registry will be opened as usual in the morning if such signal is lowered or cancelled at or before 6:00 a.m. on Monday to Friday.
- Hearings will be resumed at 2:30 p.m. if such signal is lowered or cancelled between 6:00 a.m. and 11:00 a.m. or at 11:00 a.m. on Monday to Friday. The Family Court Registry will be re-opened at the usual time in the afternoon.
- Hearings will remain adjourned for the whole day and be resumed at 9:30 a.m. the next day which is not a Saturday or public holiday if such signal is lowered or cancelled after 11:00 a.m. on Monday to Friday.
- The Family Court Registry may be re-opened in the afternoon as soon as practicable subject to the circumstances prevailing at the time if such signal is lowered or cancelled after 11:00 a.m. on Monday to Friday. However, they will remain closed if such signal is lowered or cancelled 2 hours or less before the normal closing hours on Monday to Friday.

- Please note the announcements on radio and television by the Judiciary about the resumption of hearings and re-opening time of the Family Court Registry or you may view the announcement (upon issue) at the Government's Press Release webpage at <http://www.info.gov.hk/gia/general/today.htm>. You may also call the Family Registry at 2840 1218 to make enquiries.

## Duty Judge

Each week, there will be a Judge on duty to deal with urgent applications.

Judiciary  
January 2010  
(1st Edition)

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