
CHAPTER 99A
DOMESTIC VIOLENCE (PROTECTION ORDERS)

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CHAPTER 99A

DOMESTIC VIOLENCE (PROTECTION ORDERS)

AN ACT TO PROVIDE FOR THE GRANTING OF PROTECTION ORDERS IN CIRCUMSTANCES SURROUNDING DOMESTIC VIOLENCE AND FOR RELATED AND CONSEQUENTIAL MATTERS *24 cf 2007*

[Assent 29th March, 2007]

[Commencement 1st December 2008] *SI 102/2008*

1. This Act may be cited as the Domestic Violence (Protection Orders) Act. *Short title.*

2. In this Act — *Interpretation.*

“child” includes an adopted child, a stepchild or a child who is a member of the household of the complainant and is treated as such by the complainant and the complainant's spouse or partner;

“clerk” means the clerk of the court;

“complainant” means a person who applies under this Act for a protection order;

“court” means the Magistrates Court having jurisdiction to hear the application save where otherwise provided in this Act;

“the Department” means the Department of Social Services/Rehabilitative and Welfare Services;

“domestic violence” includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, any other person who is a member of the household or dependant;

“emotional or psychological abuse” means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:

- (a) persistent intimidation by the use of abusive or threatening language;

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- (b) depriving that person of the use of his property;
 - (c) interfering with or damaging the property of the person;
 - (d) the forced confinement of the person;
 - (e) making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person;

“financial abuse” means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependance;

“harassment” includes —

- (a) the intimidation of a person by —
 - (i) persistent verbal abuse;
 - (ii) threats of physical violence;
 - (iii) the malicious damage of the property of a person; or
 - (iv) any unwanted physical, verbal or visual sexual advances, requests for sexual favours, and other sexually oriented conduct which is offensive or objectionable to the recipient, including, but not limited to: epithets derogatory or suggestive comments, slurs or gestures and offensive posters, cartoons, pictures, emails, telephone calls or drawings but not being an occasional compliment of a socially acceptable nature;
- (b) stalking;
- (c) the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof; or
- (d) the indulgence or engagement in a pattern of behaviour by a person that would or

likely have the effect of undermining the emotional or well-being of another;

“magistrate” has the meaning as in the Magistrates Act; Ch 54

“partner” means —

- (a) a party to a common law relationship between a man and woman living with, or who have lived with, each other in the same household as if they were husband and wife; and
- (b) a person who would, but for the fact of not living in the same household, be said to be having or have had with a person of the other sex an intimate relationship;

“physical abuse” means any act or omission which causes physical injury to a complainant or his child and includes the commission of or an attempt to commit any of the offences of the nature listed in the First Schedule in relation to the complainant or his child; First Schedule

“protection order” means an order under section 3 or 5;

“respondent” means the person referred to in section 4(2);

“spouse” includes a former spouse;

“stalking” includes —

- (a) persistent following of a person from place to place;
- (b) the watching or besetting of the place where a person resides, works, carries on business or happens to be;
- (c) persistent telephoning or other attempts at communicating with a spouse, partner or child or other member of that spouse's household and knowing that such course of conduct would likely cause annoyance to that spouse, partner or member:

Provided nothing in paragraphs (a), (b) or (c) applies to conduct on the part of a person acting in the performance of his

duties in providing security for the benefit of another.

Protection order.

3. (1) Where on an application made in accordance with section 4 in respect of a person and without prejudice to section 5(6) the court is satisfied on the balance of probabilities that a person —

- (a) has engaged in or has threatened to engage in conduct that is capable of constituting domestic violence or an attempt to commit domestic violence against the spouse, partner or child of that person or some other member of the household; or
- (b) without prejudice to paragraph (a), has engaged in conduct that may reasonably be regarded as harassment of the spouse, partner or child, or other member of the household,

and unless that person is restrained, is likely to engage in further conduct that would constitute conduct referred to in paragraph (a) or (b), it may make an order, in this Act referred to as a protection order, restraining the person from engaging in that conduct or in similar conduct.

(2) Subject to subsection (3), on an application for a protection order under subsection (1), the court may where it considers that it is necessary to do so in order to ensure the safety of the spouse, partner or child pending the hearing and determination of the application, make an interim protection order before considering the application.

(3) Without prejudice to sections 4(9) and 5(6) the court shall not make an interim protection order under subsection (2), unless the application for such an order is supported by oral evidence on oath or by evidence on affidavit given by the complainant.

(4) Subject to sections 18(1) and 20(2), a protection order made by the court under subsection (1) may be for such period of time as the court considers necessary, but may, on the application of the complainant or the respondent, be varied or revoked.

Application for protection order.
Second Schedule.

4. (1) An application for a protection order in accordance with Form 1 in the Second Schedule may be made by way of complaint by —

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- (a) the spouse or partner of the person against whom the order is sought where the domestic violence was committed or the harassment conducted against that spouse, partner or a child of the household;
 - (b) any other member of the household, not being a spouse, partner or child;
 - (c) the Commissioner of Police;
 - (d) with the leave of the court, a person other than a person mentioned in paragraph (a), as agent for a person to whom that paragraph applies; or
 - (e) an officer of the Department on behalf of a child against whom the domestic violence was committed or the harassment conducted.

(2) The person against whom the order is sought shall be the respondent to the application.

(3) Where an application for a protection order has been made to the court under subsection (1), the court shall issue a copy of the application together with a summons in accordance with Form 2 set out in the Second Schedule to the respondent forthwith to be served personally on the respondent.

Second Schedule

(4) Where it appears to the Court that it is not reasonably practicable to serve personally on the respondent a copy of an application for a protection order, or any other document required under the Act to be served personally the court may —

- (a) order that the copy of the application be served by such other means as the court thinks just;
- (b) make an order for substituted service.

(5) Notwithstanding anything in this or any other Act, any document required to be served under this Act may be served by an attorney-at-law or his agent.

(6) Where it is proved to the satisfaction of a magistrate on oath that the summons and the copy of the application referred to in subsection (3) or (4) was served on the respondent within what appears to the magistrate to be a reasonable time and the respondent failed to appear at

the time and place appointed for the hearing, the magistrate may —

- (a) proceed to hear and determine the matter in the absence of the respondent; or
- (b) where the court is satisfied, having regard to the information before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the court.

(7) Where a complainant is a person referred to in paragraph (b), (c) or (d) of subsection (1), a protection order shall not be made in respect of the application unless notice of the application in accordance with Form 2 of the Second Schedule was given to the spouse or partner against whom the domestic violence was committed or the harassment was conducted or to any other interested party concerned.

Second Schedule.

(8) The court shall endeavour to hear an application for a protection order within two days after the date of service of the application or as soon as practicable thereafter.

(9) A court may make a protection order where it considers just to do so upon the evidence presented to it notwithstanding the absence of the oral testimony of the person against whom the domestic violence or harassment is alleged to have been or attempted to have been perpetrated.

(10) Notwithstanding anything to the contrary in any law any statement signed by that person in the presence of a police officer or officer of the Department to whom that person made the allegation may be adduced in evidence by the officer for the purposes of this section.

Preliminary measures.

5. (1) Upon the appearance before the magistrate of a respondent the magistrate may if he considers, having regard to the particulars of the complaint and any representations made, that the subject matter of the complaint may be ameliorated through counselling or parenting sessions carried out or arranged by officers of the Department the magistrate may adjourn further hearing of the application and refer the parties to the Department for that purpose.

(2) Where the court adjourns any proceedings under subsection (1) it may request an officer of the Department to present before it on a specified date a report in writing as to whether any progress has been made towards a resolution of the complaint.

(3) Upon receipt of that report which shall not include any other information or details of what transpired at any counselling session the court may deal with the complaint as it sees fit in accordance with this Act.

(4) Prior notice of each date on which a report is to be presented pursuant to subsection (2) shall be given to the parties and shall be construed for the purposes of the hearing of the complaint as an adjourned date of hearing.

(5) In proceedings under this Act the court may at any time before the taking of evidence, accept an Undertaking from the respondent given under oath, that the respondent shall not engage in conduct specified in the complaint or any other conduct that constitutes domestic violence.

(6) Where an Undertaking is given under subsection (5) the court may make a protection order or interim order, as it deems fit, in respect of the Undertaking.

(7) An Undertaking may deal with all matters that may be dealt with under a Protection Order or Interim Order as the Court sees fit, having regard to the matters referred to in section 9 (1).

(8) An Undertaking shall be deemed to remain in force for the period stated in the Undertaking or if it was made the subject of a protection order or interim protection order, for the period stated therein but shall not exceed two years.

(9) Subsections (3) through (6) and subsection (8) of section 4, sections 10 (2), 11, 13 and 19 apply in relation to an Undertaking as they do apply to a protection order, interim order or an application for such an order.

6. (1) Subject to subsection (3) no application shall be made by a person to a magistrate for a protection order against his or her spouse or partner if there are pending in the Supreme Court proceedings by either of them in respect of their relationship or of any child of that relationship save however that application may be made in the Supreme Court as if the same were an application made to a magistrates court and for that purpose the provisions of this

Duplication of proceedings.

Act regarding the powers of that court on such an application including the Forms set out in the Second Schedule shall *mutatis mutandis* apply.

(2) Where proceedings as mentioned in subsection (1) are instituted in the Supreme Court while a protection order is pending against one spouse or partner nothing in this Act shall preclude a judge of that court from varying or discharging that order as he sees fit.

(3) Without prejudice to subsection (1) any court seised of a matter that involves contested issues between spouses or partners may, if it considers it just having regard to the nature of the matter and of any behaviour displayed or said to have been displayed by one party to the other, on its own motion exercise any of the powers conferred by the other sections of this Act as if a complaint had been lodged or an application made under this Act.

Affidavit
evidence.

7. (1) Evidence on an application for a protection order may be given on affidavit.

(2) It is not necessary to call a person who made an affidavit pursuant to subsection (1), to give evidence unless a party to the proceedings or the court hearing the application so requires.

Form of orders.

8. (1) Subject to this Act, a protection order may include provisions restraining the respondent —

- (a) from being on premises on which the complainant for the protection order or the child or member of the household in respect of whom the order was made, resides;
- (b) from being on premises that are the place of work of the complainant or the place of education or work of the child or member of the household in respect of whom the order was made;
- (c) from being in a specified locality, being a locality in which premises as mentioned in paragraph (a) or (b) or any other premises the court deems it necessary to specify, are situated;
- (d) from approaching within a specified distance of the complainant or the child or member of the household in respect of whom the order was made;

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- (e) where the person continues to reside with the complainant or the child or member of the household in respect of whom the order was made, from entering or remaining on the premises, while intoxicated or under the influence of a drug;
 - (f) from causing another person to engage in the conduct referred to in paragraph (a) or (c) of subsection (3);
- (2) A protection order may —
- (a) require the respondent to —
 - (i) leave the premises referred to under paragraph (a) of subsection (1);
 - (ii) continue any legal or other obligation the respondent may have to pay the rent, mortgage, utilities or taxes of the premises referred to in that sub-paragraph where the respondent is asked to leave under sub-paragraph (i);
 - (iii) allow the complainant to enter and remain on the premises referred to in paragraph (c) of subsection (1); or
 - (b) specify conditions subject to which the respondent may be on premises or in a locality specified in the order.
- (3) A protection order that includes a provision mentioned in paragraph (a) of subsection (1) may also include a provision —
- (a) restraining the respondent from taking possession of personal property of either the complainant or the respondent, being property that is reasonably needed by a member of the complainant's household;
 - (b) directing the respondent to give possession of such of that property as is specified in the order, to a specified member of the respondent's household;
 - (c) requiring the respondent to pay compensation for monetary loss incurred

by a complainant as a direct result of conduct that amounted to domestic violence;

- (d) requiring the respondent to pay interim monetary relief to the complainant for the benefit of the complainant and any child where there is no existing order relating to maintenance until such time as an obligation for support is determined pursuant to any other written law;
- (e) requiring the respondent to relinquish to the police any firearm licence, firearm or other weapon which may or may not have been used but which the court considers just to order;
- (f) prohibiting the respondent from damaging property of the complainant or a child of the complainant or respondent; or
- (g) prohibiting the respondent from causing another person to engage in the conduct referred to in paragraph (a) or (f).

(4) Notwithstanding section 2 in paragraphs (b), (c) and (d) “complainant” means a person against whom the offence was committed or who was harassed.

(5) A protection order shall, in each case, provide that the parties to the order or any child in respect of whom the order was made, attend the Family Services Division of the Department or such other agency as the court specifies, for appropriate professional counselling and therapy, due regard being had to the business or employment responsibilities of the parties.

(6) Where a protection order has been made in accordance with subsection (5), the Family Services Division of the Department or any other agency specified by the court under subsection (5) shall forward to the court a report setting out the dates on which counselling took place, the nature of the counselling and therapy carried out and the response given to the counselling and therapy by the parties to the order and any child in respect of whom the order was made not later than one month before the expiration of the order or at such time as the court specifies.

9. (1) In determining an application for a protection order, the court shall have regard to the following —

Matters to be taken into account

- (a) the need to ensure that persons are protected from violence and harassment;
- (b) the welfare of any child who is a member of the respondent's household;
- (c) the need to preserve and protect the institution of marriage and to give protection and assistance to the family as a natural and fundamental group unit of society;
- (d) the accommodation needs of the members of the household;
- (e) any hardship that will be caused to the respondent or to any other person as a result of the making of the order; and
- (f) any other matter that in the circumstances of the case, the court considers relevant.

(2) An order under section 8(3)(c) for the payment of compensation, which shall be received by the court on behalf of the complainant, shall not exceed ten thousand dollars and shall include but not be limited to —

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) moving and accommodation expenses;
- (d) reasonable legal costs.

(3) In determining whether to make an order that includes a provision of the kind mentioned in subsection (2) or (3) of section 8, the court shall also take into account the property, income and financial resources, and the financial obligations, of the complainant and the respondent.

(4) In having regard to the matters referred to in subsections (1) and (3), the court shall consider the matters referred to in paragraphs (a) and (b) of subsection (1) as being of primary importance.

10. (1) Subject to this Act, a protection order shall not be made by the court unless the respondent has had actual notice in the Form 2 set out in the Second Schedule, of the application for the order.

Notice to respondent
Second
Schedule

(2) Where a protection order or an interim protection order is made or varied by the court, the clerk shall forthwith —

Second Schedule

- (a) arrange for an order in the Form 3 or in the Form 4 as the case may be set out in the Second Schedule to be formally drawn up and filed in the court;
- (b) cause a copy of the order referred to in paragraph (a) to be served personally on the respondent;
- (c) cause a copy of the order referred to in paragraph (a) to be forwarded to —
 - (i) the Commissioner of Police and to the police officer in charge of the police station that is situated in the jurisdiction of the place of residence of the complainant and respondent; and
 - (ii) any other person who was a party to the proceedings.

Explaining of proposed order to respondent

11. (1) Where —

- (a) the court proposes to make a protection order or an interim protection order; and
- (b) the respondent is before the court,

the court shall, before making the order, explain to the respondent in language that he understands, the matters contained in subsection (2).

- (2) The matters referred to in subsection (1) are —
- (a) the purpose, terms and effect of the proposed order;
 - (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
 - (c) the means by which the proposed order may be varied or revoked.

Ouster order

12. (1) Where an agreement, including a mortgage or a lease of premises provides that, if the respondent ceases to reside in his or her place of residence, a person may take action that would be prejudicial to the interests of the respondent or a member of the respondent's household the

person is not entitled to take that action if the respondent ceases to reside in the place of residence in compliance with a particular order without prejudice to the continuing obligations of the respondent under the agreement, mortgage or lease.

(2) Where the court is satisfied on evidence before it that an agreement referred to in subsection (1) exists in relation to the respondent, the court shall at the time of making an order, direct that a notice in accordance with Form 5 in the Second Schedule be sent by the clerk of the court to the person referred to in subsection (1).

Second Schedule

13. Where —

Breach of
protection order

- (a) a protection order or an interim protection order is made and the respondent —
 - (i) was present at the time the protection order or interim protection order was made; or
 - (ii) was not present at the time the protection order or interim protection order was made, and a copy of the protection order or interim protection order has been served personally on the respondent or it had been necessary to effect that service by substituted service; and
- (b) the respondent contravenes the order in any respect,

the respondent is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months or to both.

14. (1) Subject to subsection (2), where the court makes a protection order the court may —

Power of arrest

- (a) where it is satisfied that the respondent has caused actual bodily harm to the complainant or to the child concerned as the case may be;
- (b) where it considers that the respondent is likely to cause actual bodily harm again; and
- (c) where the complainant has applied for a power of arrest to be attached to the

protection order either before or at any time during the hearing of the application,

attach a power of arrest to the protection order.

(2) No power of arrest may be attached to a protection order unless the respondent has been given notice that such a power has been applied for.

(3) Where a power of arrest is attached to a protection order, a police officer may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of such a provision of the protection order as falls within paragraphs (a) and (b) of subsection (1) by reason of that person's use of violence or, as the case may be, of his entry into any premises or area.

(4) Where a power of arrest is attached to a protection order and a person to whom the order is addressed is arrested under subsection (3) —

- (a) he shall be brought before the court within the period of twenty-four hours beginning at the time of his arrest, or, as soon as reasonably practicable thereafter, and dealt with for an offence under section 13; and
- (b) he shall not be released within that period except on the direction of the court,

but nothing in this section authorizes the detention of that person at any time after the expiry of that period.

Prosecution
instituted by
summons.

15. (1) A person mentioned in section 4(1) may lay before a court an information in accordance with section 13.

(2) Where a prosecution for an offence under section 13 is instituted by summons, the summons shall require the person to appear to answer the information at a time not later than three sitting days of the court after the time at which the summons is issued.

(3) Service of the summons referred to in subsection (1) shall be effected at least twenty-four hours before the time appointed in the summons for the hearing of the information.

(4) For the purposes of subsection (3) and section 14(4) no account shall be taken of any Saturday, Sunday or public holiday.

16. (1) A police officer may, without warrant enter any premises for the purpose of giving assistance to anyone present thereon —

Power to enter domestic premises.

- (a) if he has reasonable grounds to suspect that a protection order is being violated; or
- (b) if upon the invitation of a person resident at the premises he has reasonable grounds to suspect that a person therein has suffered, or is in imminent danger of suffering, physical injury at the hands of some other person therein.

(2) Nothing in this Act shall be construed as limiting the powers conferred by any other law upon a court or a police officer except where it is provided in this Act that the provision herein is notwithstanding anything to the contrary in that other law.

(3) Where a police officer exercises a power of entry upon private premises in accordance with the foregoing provisions of this section, he shall as soon as practicable thereafter submit a written report to the officer in charge of the police station to which he is assigned.

17. The power of the court to make a protection order or an interim protection order in respect of a person may be exercised notwithstanding that the person has been charged with an offence arising out of the same conduct as that out of which the application for the protection order arose.

Criminal proceedings.

18. (1) A protection order remains in force for such period, not exceeding three years, as the court specifies in the order.

Duration of order.

(2) Where a protection order contains a prohibition or condition of the kind specified in section 8, the court may specify different periods, being periods none of which exceeds the period specified pursuant to subsection (1), as the period for which each prohibition or condition is to remain in force.

(3) Subject to this section, an interim protection order remains in force for such period, not exceeding fourteen days as the court specifies in the order.

(4) Where —

- (a) the court adjourns the hearing of an application for a protection order; and

- (b) an interim order is in force in respect of the respondent,

the court may, by order, extend the period for which an interim order is to remain in force until the date fixed for the further hearing of the application.

(5) An interim protection order made on an application under section 3, ceases to be in force —

- (a) where a protection order is made on that application and the respondent is present at the time the protection order is made, when the protection order is made;
- (b) where a protection order is made on that application but the respondent is not present at the time the protection order is made, when the protection order is served on the respondent; or
- (c) when the application is dismissed.

Variation and
revocation of
orders.
Second
Schedule.

19. (1) Where a protection order or an interim protection order is in force, a party to the proceedings in which the order was made may apply to the court that made the order or a court of like jurisdiction in accordance with Form 4 set out in the Second Schedule for an order varying or revoking the order set out in the Second Schedule.

(2) On an application under subsection (1), the court may by order, vary or revoke the protection order or the interim protection order as the case may be.

(3) The clerk shall cause a copy of an application under this section to be served personally on each person other than the applicant, who was a party to the proceedings in which the original order was made.

(4) In determining whether to vary or revoke a protection order under subsection (2), the court shall have regard to the matters specified in section 9 and to any report made pursuant to subsection (6) of section 8 in relation to the parties.

Jurisdiction.

20. (1) Where a protection order is in force in respect of a person who files pursuant to section 6(1) an application for similar relief in the Supreme Court that order shall —

- (a) subject to section 6(2) remain in force until expiry and shall not be varied by a magistrates court before its expiration;
- (b) not abate merely by reason that matrimonial proceedings have been subsequently instituted in the Supreme Court by either of the parties concerned.

(2) An order made under section 8(3)(d) for the benefit of a party to or a child of a marriage shall be deemed to be an order made under section 4 of the Matrimonial Causes (Summary Jurisdiction) Act but shall not extend beyond the duration of the protection order.

Ch. 126.

21. (1) Where one party to a marriage is entitled to occupy the matrimonial home by virtue of a beneficial estate or interest or contract or by virtue of any written law giving that party the right to remain in occupation, and the other party to the marriage is not so entitled, then, subject to the provisions of this Act, the party not so entitled shall have the following rights (in this section referred to as “rights of occupation”) —

Rights concerning matrimonial home where one spouse has no estate.

- (a) if in occupation, a right not to be evicted or excluded from the matrimonial home or any part thereof by the other party except with the leave of the court given by an order under this section; and
- (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the matrimonial home.

(2) So long as one party to a marriage has rights of occupation, either party to the marriage may apply to the Supreme Court for an order —

- (a) declaring, enforcing, restricting or terminating those rights;
- (b) prohibiting, suspending or restricting the exercise by either party of the right to occupy the matrimonial home; or
- (c) requiring either party to permit the exercise by the other party of that right.

(3) On an application for an order under this section, the court may make such order as it thinks just and reasonable having regard to the conduct of the parties to the marriage in relation to each other and otherwise, to

their respective needs and financial resources, to the needs of any children and to all the circumstances of the case, and, without prejudice to the generality of the foregoing provision —

- (a) may exclude part of the matrimonial home from a party's right of occupation (and, in particular, a part used wholly or mainly for or in connection with the trade, business or profession of the other party);
- (b) may order a party occupying the matrimonial home or any part thereof by virtue of this section to make periodical payments to the other in respect of the occupation; or
- (c) may impose on either party obligations as to the repair and maintenance of the matrimonial home or the discharge of any liabilities in respect of the matrimonial home.

(4) Orders under this section may, in so far as they have a continuing effect, be limited so as to have effect for a period specified in the order or until further ordered.

(5) Where a party is entitled under this section to occupy a matrimonial home or any part thereof and makes any payment in or towards satisfaction of any liability of the other party in respect of mortgage payments affecting the matrimonial home, the person to whom the payment is made may treat it as having been made by that other party, but the fact that that person has treated any such payment as having been so made shall not affect any claim of the first-mentioned party against the other to an interest in the matrimonial home by virtue of the payment.

(6) The rights of occupation of a party to a marriage shall continue only so long as the marriage subsists and the other party is entitled as mentioned in subsection (1) to occupy the dwelling house.

22. (1) Where each of two parties to a marriage is entitled, by virtue of a legal estate vested in them jointly, to occupy a dwelling in which they have or at any time have had a matrimonial home, either of them may apply to the Supreme Court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling, for an order prohibiting, suspending or restricting

Rights concerning matrimonial home where both spouses have estate.

its exercise by the other or requiring the other to permit its exercise by the applicant.

(2) In relation to orders under this section, subsections (3) and (4) of section 21 shall apply as they apply in relation to orders under that section.

(3) Where each of two parties to a marriage is entitled to occupy a dwelling by virtue of a contract, or by virtue of any written law giving them the right to remain in occupation, this section shall apply as it applies where they are entitled by virtue of a legal estate vested in them jointly.

(4) In determining for the purposes of this section whether two parties to a marriage are entitled to occupy a dwelling house, there shall be disregarded any right to possession of the dwelling conferred on a mortgagee of the dwelling house under or by virtue of the mortgage, whether the mortgagee is in possession or not.

(5) For the purposes of this Act —

“apartment” means a separate and self-contained set of premises constructed for use as a place of residence and forming part of a building from some other part of which it is divided;

“child of the family” has the same meaning as in the Matrimonial Causes (Summary Jurisdiction) Act; Ch 126

“dwelling” means a building used or intended to be used mainly as a separate dwelling or place of residence and includes an apartment;

“matrimonial home” means any dwelling being used exclusively or principally as a home by one or both of the parties to a marriage, in any case where —

(a) either or both of the parties —

(i) owns the dwelling,

(ii) owns a specified share of any estate or interest in the land on which the dwelling is situated and by reason of reciprocal agreements with the owners of the other shares is entitled to the exclusive occupation of the dwelling, or

(iii) holds shares in a company which owns any estate or interest in the land on which the dwelling is situated and, by reason of holding those shares, is entitled to the exclusive occupation of the dwelling; and

(b) either or both of the parties owned the dwelling or the specified share in land or held the shares, as the case may be, at the date of any application under the provisions of this Act;

“mortgage” includes a charge and mortgagor and mortgagee shall be construed accordingly;

“mortgagor” and “mortgagee” includes any person deriving title under the original mortgagor or mortgagee.

Restriction on publication.

23. (1) A person shall not publish in a newspaper or by broadcast or otherwise disseminate to the public the identity of a party to a proceedings in connection with a protection order or information from which the identity of such a party may readily be ascertained.

(2) If any matter is published or broadcast in contravention of subsection (1), the following persons, namely —

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programmes in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

(3) Nothing in this section limits —

- (a) the provisions of any other enactment relating to prohibition or regulation of the

publication of reports or particulars relating to judicial proceedings; or

(b) the power of a court to punish any contempt of court.

(4) This section shall not apply to the publication of any report in any publication that —

(a) is of a *bona fide* professional or technical nature; or

(b) is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, marriage counselors or social welfare workers.

24. (1) The business of a court shall, so far as is consistent with the due dispatch of business, be arranged in such manner as may be necessary for separating the hearing and determination of applications under this Act from other business.

Hearing and evidence.

(2) No person shall be present during the hearing and determination by a court of any application under this Act except —

(a) members and officers of the court;

(b) parties to the case before the court, counsel and attorneys and witnesses and other persons directly concerned in the case;

(c) counsel and attorneys in attendance for other cases;

(d) any other person whom the court may permit to be present.

(3) During the taking, in any application under this Act, of any evidence which, in the opinion of the court, is of an intimate or indecent character, the court may, if it thinks it necessary in the interest of the administration of justice or of public decency, direct that all persons, not being members or officers of the court or parties to the case their counsel and attorneys or other persons directly concerned in the case, be excluded from the court during the taking of that evidence.

(4) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

(5) Nothing contained in this section shall affect the exercise by the court of the power to direct what witnesses shall be excluded from the court until they are called for examination.

(6) Notwithstanding any other law to the contrary, in any hearing of an application for a protection order made by an officer of the Department under paragraph (e) of section 4(1) in respect of a child, the spouse or partner of a person against whom the order is sought is a compellable witness.

Bail

25. (1) Notwithstanding any other law to the contrary, where the court is required to determine whether to grant bail in respect of an offence under this Act, the matters that it shall take into account shall include —

- (a) the need to ensure that persons are protected from violence and harassment;
- (b) the welfare of the child, where the respondent or a victim of the alleged offence has custody of a child who has not attained the age of 18 years; and
- (c) any hardship that may be caused to the respondent or to members of the respondent's household if bail is not granted or a particular condition is imposed.

(2) The court may grant bail on such terms and conditions as it thinks fit.

(3) Where —

- (a) bail has been granted to a person upon conditions; and
- (b) the person contravenes or fails to comply with any condition,

the bail is thereupon forfeited and the respondent is liable to be rearrested.

Appeal

26. (1) Subject to subsection (3), an appeal against an order made by a magistrate's court under this Act shall lie in the same manner as if it were an order to which section 54 (2) of the Magistrates Act applies.

Ch 54

(2) Where an appeal against an order is made by the respondent under subsection (1), the court shall impose in respect of any recognizance made by the respondent in relation to the appeal such conditions as it considers necessary for the safety and protection of the complainant.

- (3) An appeal under this Act does not lie from —
- (a) the making, variation or revocation of an interim protection order; or
 - (b) the refusal of the court to make an interim protection order.

(4) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under subsection (1) and every such order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

27. Whenever a police officer intervenes in a matter for which a protection order may be sought under this Act, the police officer shall, as soon as possible take the following steps —

Assistance to victims of domestic violence.

- (a) where a victim indicates that he has suffered injuries though not visible, which require medical assistance, the police officer shall assist the victim to obtain medical treatment as soon as possible;
- (b) where a victim of domestic violence expresses concern for his safety, the police officer shall assist the victim in getting to a place of safety;
- (c) where a victim of domestic violence requests it, a police officer shall protect a victim by accompanying the victim when he takes his personal belongings from a place where the would be respondent may reside;
- (d) advise the victim of domestic violence on the importance of preserving the evidence;
- (e) inform the victim as to his rights and of services which may be available to assist him, be they government or private services.

Preparation of reports.

28. (1) Where a police officer intervenes in an incident of domestic violence, he shall prepare a written report of same which shall contain the allegations of the persons involved and the witnesses, the type of investigation conducted and how the incident was resolved.

(2) The police officer in charge of every police station shall ensure that all records of domestic violence complaints and cases are properly compiled so as to facilitate easy reference to data.

(3) The police officer in charge of every police station shall ensure that confidentiality is maintained with respect to the identity of persons involved in all matters of domestic violence though inspection of that data may be made by an officer of the Department duly authorized by the Minister to do so.

Role of Ministry in alleviating domestic violence and abuse.

29. The Ministry responsible for social services shall be responsible for —

- (a) promoting and developing educational programmes for the prevention of domestic violence;
- (b) studying, investigating and publishing statistics and other relevant reports on the domestic violence problem in The Bahamas, its causes, manifestations and scope; the consequences and the options for confronting and eradicating it, in conjunction with The Bahamas Police Force;
- (c) identifying groups and sectors in society in which domestic abuse is manifested and educating these groups and sectors making them aware of the skills required to combat domestic violence;
- (d) creating an awareness among society with regard to the needs of victims of domestic violence and their families;
- (e) developing strategies to encourage changes in the policies and procedures in government agencies in order to improve their response to the needs of the victims of domestic violence;

- (f) the establishing of programmes on information support and counselling services for victims of domestic violence;
- (g) encouraging the establishment of shelters for victims of domestic violence;
- (h) encouraging programmes of services for boys and girls who come from homes where there is abuse and violence;
- (i) providing training and orientation services for persons who assist in the treatment and counselling of victims of domestic violence and abuse;
- (j) analyzing and carrying out in conjunction with other studies on the need for education and retraining of persons who engage in conduct that constitutes domestic violence and abuse and for their rehabilitation.

30. Rules of court may be made by the Rules Committee constituted by section 75 of the Supreme Court Act for carrying into effect the provisions of this Act, including the provision of any forms to be used for the purposes of this Act.

Rules
Ch 53

31. Nothing in this Act shall be deemed to have altered any right a spouse may have to ownership of property.

Ownership of
property

32. (1) The provisions of the Sexual Offences and Domestic Violence Act mentioned in the first column of the Third Schedule are amended in the manner and to the extent set out in the second column of that Schedule.

Repeal and
saving

Third Schedule
Ch 99

(2) Any amendment set out in the Third Schedule shall not affect anything duly done or to be done consequent upon proceedings instituted prior to the coming into operation of this Act and any such thing may continue to be done as if this Act had not come into operation.

Third Schedule

(3) Without prejudice to subsection (2) reference in all laws or to any document existing prior to the date of the coming into operation of this section to the Sexual Offences and Domestic Violence Act shall after that date be construed and read as a reference to that Act as amended by this Act.

FIRST SCHEDULE (Section 2)

Assault and Battery

Aggravated assault causing wound or harm

Violent or obscene language

Possession of firearm with intent

Setting fire to a dwelling house, any person being therein

Malicious damage to property, to wit, clothing

Conspiring or soliciting to commit murder

Attempted murder

Sending letters threatening to murder

Shooting or wounding with intent to do grievous bodily harm

Inflicting injury with or without a weapon

Attempting to choke, etc., in order to commit any indictable offence

Using drugs

Administering poison, etc., so as to endanger life or inflict grievous bodily harm

Administering poison, etc., with intent to injure

Exposing children so that life is endangered or mentally affected

Attempting to blow up buildings

Driving a vehicle injuring or with intent to injure a person by furious driving

Procuring abortion

Procuring drugs to cause abortion

Exposing children to risk of burning

Allowing children or young persons to be in brothels

Causing, encouraging or favouring seduction or prostitution of children

Rape

Sexual assault by spouse

Incest

Sexual intercourse with adopted minor

Sexual intercourse with mentally subnormal person

Buggery

Serious indecency

SECOND SCHEDULE

(Section 4)

Form 1

IN THE MAGISTRATE'S COURT FOR DISTRICT
Domestic Violence (Protection Orders) Act

APPLICATION FOR PROTECTION ORDER

Between

A. B. of Complainant
and

C. D. of Respondent

I.

of.....

being the spouse of the respondent/member of the
respondent's household hereby apply for a protection
order on the ground (s) that:

.....

Complainant

taken and sworn before me thisday of

(Signature)

Magistrate for District

Form 2

(Sections 4(3), 4(7) and 10(1))

IN THE MAGISTRATE'S COURT FOR DISTRICT

Domestic Violence (Protection Orders) Act

NOTICE OF PROCEEDINGS AND SUMMONS

No.....cf 20.....

Between

A. B. of Complainant
and

C. D. of Respondent

To the Respondent:

An application under section 4 of the Domestic Violence (Protection Orders) Act for a protection order has been made by
 against you. A copy of the application is attached.

The application has been set down for hearing on
 20.....at
 (time).....at.....

You are hereby summoned to appear at the above-mentioned Court on theday ofat the hours of..... in thenoon to answer the complainant.

If you do not appear in person at the hearing of the application, the Court may —

- (a) deal with the application in your absence;
or
- (b) issue a warrant for your arrest to be brought before the Court

Dated20.....

(Signature)

Clerk cf the Magistrates Court

Form 3

(Section 10(2))

IN THE MAGISTRATE'S COURT FOR DISTRICT

Domestic Violence (Protection Orders) Act

PROTECTION ORDER

INTERIM PROTECTION ORDER

No.....cf 20.....

Between

A. B. of Complainant
and

C. D. of Respondent

The court, having heard an application made by (*name cf complainant*) under the Domestic Violence (Protection Orders) Act, in respect of the conduct [*or threatened conduct*] of [*name cf respondent*] towards [*name cf person to be protected*]:

Now the court this day orders that for [*period*]:

1. [*name cf respondent*] not engage in the following conduct:
2. [*name cf respondent*] not engage in conduct that constitutes any offence referred to under section 3:
3. [*name cf respondent*] comply with the following prohibitions and conditions:

[*specify prohibitions and conditions and any other period or periods for which they are imposed*].

Dated20.....

(*Signature*)

Clerk cf the Magistrates Court

Form 4

(Section 19)**IN THE MAGISTRATE'S COURT FOR DISTRICT**

Domestic Violence (Protection Orders) Act

**ORDER VARYING PROTECTION ORDER or
INTERIM PROTECTION ORDER**No.....*cf* 20.....**Between****A. B. of** Complainant
and**C. D. of** Respondent

The Court, having heard an application made by [*name cf complainant*] under the Domestic Violence (Protection Orders) Act in respect of the conduct [*or threatened conduct*] of [*name cf respondent*] towards [*name cf person to be protected*], and having on [*date cf original order*] ordered that, for [*period*]:

1. [*name cf respondent*] not engage in the following conduct:
2. [*name cf respondent*] not engage in conduct that constitutes any offence referred to under section 3:
3. [*name cf respondent*] comply with the following prohibitions and conditions:

[*specify prohibitions and conditions and any other period or periods for which they are imposed*].

Now the Court, on the application of [*name cf complainant*] this day orders that the Protection Order [*or Interim Protection Order*] be varied as follows:

[*specify details cf variation*].

Dated20.....

(Signature)

Clerk *cf* the Magistrates Court

Form 5

IN THE MAGISTRATE'S COURT FOR DISTRICT

Domestic Violence (Protection Orders) Act

NOTICE TO EMPLOYER/LANDLORD/MORTGAGEE

You are hereby notified that a protection order has been made under the above-named Act against.....
of.....

your employee/tenant/mortgagor.

Your attention is drawn to section 12(1) of the said Act which is set out below.

Domestic Violence (Protection Orders) Act

“12. (1) Where an agreement, including a mortgage or a lease of premises provides that, if the respondent ceases to reside in his or her place of residence, a person may take action that would be prejudicial to the interests of the respondent or a member of the respondent's household the person is not entitled to take that action if the respondent ceases to reside in the place of residence in compliance with a protection order”.

(Signature)

Clerk of the Magistrates Court

THIRD SCHEDULE (Section 32)

FIRST COLUMN PROVISION OF CH.99	SECOND COLUMN AMENDMENT
S. 1	substitute the word “Act” for all the words appearing after the word “Offences”
S.29	substitute for the word “Part” wherever it appears the word “section”.
The Act	(a) Part II is repealed and the words “Part I” appearing immediately after section 1 are deleted; (b) the heading Part III together with section 38 are deleted; (c) section 39 is renumbered section 30.