

THE DOMESTIC VIOLENCE ACT

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THE DOMESTIC VIOLENCE ACT

Acts
15 of 1995,
32 of 2004.

[6th May, 1996.]

PART I. *Preliminary*

1. This Act may be cited as the Domestic Violence Act. Short title.
- 2.—(1) In this Act— Interpreta-
tion.
- “applicant” means any person who applies or on whose behalf application is made, pursuant to this Act, for an order;
- “child” means—
- (a) a person who is under the age of eighteen years and who has never been married, being a child of both spouses who resides, or immediately preceding the date of the application was residing, in the household residence; 32/2004
S. 2(a).
- (b) a child of either spouse who resides, or immediately preceding the date of the application was residing, in the household residence and who is or was, living in the household as a child of the family;
- (c) a child whether or not a child of a member of the household and— 32/2004
S. 2(b)(i).
- (i) who is or has been a member of the household; or
- (ii) who resides in the household on a regular basis; or
- (iii) of whom any member of the household is the guardian; 32/2004
S. 2(b)(ii).
- “Court” means the Resident Magistrate's Court or the Family Court;

32/2004
S. 2(c).

“dependant” includes—

- (a) a member of the family of a respondent being a person who is eighteen years of age or older and normally resides, or resides on a regular basis, with the respondent; and
- (b) a person who, by reason of physical or mental disability, age or infirmity, is reliant on the respondent for his welfare or maintenance;

“*ex parte* application” means an application made without notice to the respondent;

32/2004
S. 2(f).

“member of the household” means a person who normally resides, or resides on a regular basis, with the respondent and “member of the respondent’s household” shall be construed accordingly;

“occupation order” means an order made pursuant to section 7 and includes an interim order made under section 8;

32/2004
S. 2(e).

“prescribed person” means the spouse, a parent, a child or dependant of the respondent or any person who is a member of the respondent’s household or is in a visiting relationship with the respondent;

“protection order” means an order made pursuant to section 4 and includes an interim order made under that section;

“respondent” means a person who is named in an application made pursuant to this Act;

“spouse” includes—

- (a) a woman who cohabits with a man as if she were in law his wife;
- (b) a man who cohabits with a woman as if he were in law her husband;
- (c) a former spouse,

“visiting relationship” means a relationship between a man and a woman who do not share a common residence, which is a close personal relationship by virtue of its nature and intensity having regard to—

32/2004
S. 2(f).

- (a) the amount of time that the persons spend together;
- (b) the place where that time is ordinarily spent;
- (c) the manner in which that time is ordinarily spent;
- (d) the duration of the relationship; and
- (e) the existence of a child (if any) of both parties.

PART II. *Application for Orders*

3.—(1) The Court may, on application, grant a protection order or occupation order in accordance with this Act.

Power of
Court to
grant
protection
order or
occupation
order.

(2) An application for an order referred to in subsection (1), may be made—

- (a) by the spouse or parent in respect of whom the alleged conduct has been, or is likely to be, engaged in by the respondent;
- (b) where the alleged conduct is used or threatened against a child or dependant by—
 - (i) a person with whom the child or dependant normally resides or resides on a regular basis;
 - (ii) a parent or guardian of the child or dependant;
 - (iii) a dependant who is not mentally disabled;
 - (iv) a person who is approved by the Minister responsible for social welfare to carry out social welfare work; or
 - (v) a Constable;

32/2004
S. 3(a).

32/2004
S. 3(b).

- (c) by a person who is a member of the respondent's household or who is in a visiting relationship with the respondent, in respect of the alleged conduct engaged in or threatened by the respondent toward that person.

32/2004
S. 3(c).

(3) An application under subsection (2) may be made on behalf of a person entitled to apply under paragraph (a) or (c) of that subsection by—

- (a) a Constable; or
(b) any other person, whether or not a member of the household, with the leave of the Court.

32/2004
S. 3(c).

(4) In determining whether to grant leave under subsection (3)(b), the Court may take into account whether or not—

- (a) the application is—
- (i) in accordance with the wishes; or
 - (ii) in the best interests,
- of the person entitled to apply; and
- (b) there is any conflict between the interests of the person seeking leave and the person entitled to apply.

Protection Orders

Application
for protection
order.

4.—(1) Application may be made to the Court for a protection order to prohibit the respondent—

- (a) from entering or remaining in the household residence of any prescribed person; or
(b) from entering or remaining in any area specified in the order being an area in which the household residence of the prescribed person is located; or

DOMESTIC VIOLENCE

- (c) from entering the place of work or education of any prescribed person; or
- (d) from entering or remaining in any particular place; or
- (e) from molesting a prescribed person by—
 - (i) watching or besetting the household residence, place of work or education of a prescribed person;
 - (ii) following or waylaying the prescribed person in any place;
 - (iii) making persistent telephone calls to a prescribed person;
 - (iv) using abusive language to or behaving towards a prescribed person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the prescribed person; or
 - (v) damaging any property owned by, or available for the use or enjoyment of, the prescribed person, or any property in the care or custody or situated at the residence of the prescribed person.

32/2004
S. 4(a).

(2) On hearing an application under subsection (1), the Court may make a protection order if it is satisfied that—

- (a) the respondent has used or threatened to use, violence against, or caused physical or mental injury to, a prescribed person and is likely to do so again; or
- (b) having regard to all circumstances, the order is necessary for the protection of a prescribed person.

(3) A protection order may be made on an *ex parte* application if the Court is satisfied that the delay that would be caused by proceeding on summons would or might result in—

32/2004
S. 4(b).

- (a) risk to the personal safety of a prescribed person; or
- (b) serious or undue hardship,

and any protection order made on an *ex parte* application shall be an interim order.

(4) Where a protection order is granted on an *ex parte* application, it shall be served personally on the respondent who may apply immediately for it to be discharged.

32/2004
S. 4(c).

(5) In making a protection order under this section or an occupation order under section 7, the Court may at the same time, of its own volition or upon the application of any party applying for the order, make an order, in accordance with the provisions of the Maintenance Act, for the maintenance of—

- (a) any applicant entitled to be maintained by the respondent; or
- (b) any member of the household in respect of whom the applicant is entitled to apply for maintenance as against the respondent,

if no such order for maintenance is already in force:

Provided that the duration of an order for maintenance under this section shall not exceed the duration of the protection order made under this section or the occupation order made under section 7, as the case may be.

Breach of
protection
order.

5.—(1) Where a protection order, whether interim or otherwise, is made and—

- (a) it is served personally on the respondent; and
- (b) the respondent contravenes the order in any respect,

the respondent commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Subject to the provisions of this section, where a protection order is in force, a Constable may arrest without warrant a person whom he has reasonable cause to suspect of having committed a breach of the order.

(3) No person shall be arrested pursuant to this section unless a Constable believes that the arrest of that person is reasonably necessary for the protection of the prescribed person.

(4) For the purposes of subsections (2) and (3), the Constable shall take into account—

- (a) the seriousness of the act which constituted the alleged breach;
- (b) the time that has elapsed since the alleged breach was committed; and
- (c) the restraining effect of other persons or circumstances on the respondent.

(5) Where an arrest is made under this section—

- (a) the person arrested shall be entitled to make a telephone call to one person of his choice, not being the applicant;
- (b) the Constable who makes the arrest shall ensure that the person arrested is informed, at the time of arrest, of the right conferred by paragraph (a); and

- (c) the person arrested shall be brought before the Court within a period of forty-eight hours beginning at the time of his arrest.

Duration and discharge of protection order.

6.—(1) A party to the proceedings may apply to the Court for a discharge of a protection order.

(2) A copy of an application made under subsection (1) shall be served personally on each person who was a party to the proceedings in which the original order was made.

(3) In determining whether to discharge a protection order the Court shall have regard to the matters referred to in section 4 (2).

Occupation Orders

Application for a grant of occupation order.

7.—(1) Application may be made to the Court by or on behalf of a prescribed person for an occupation order granting the prescribed person named in the order the right to live in the household residence.

(2) Subject to subsection (3), the Court may, on an application under subsection (1), make an occupation order granting to the prescribed person, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right to occupy the household residence.

(3) The Court may make an order under subsection (2) only if the Court is satisfied that such an order—

(a) is necessary for the protection of the prescribed person; or

(b) would be in the best interest of a child.

8.—(1) An occupation order may be made on an *ex parte* application if the Court is satisfied that—

Ex parte
application
for occupa-
tion order.

- (a) the respondent has used violence against or caused physical or mental injury to a prescribed person; and
- (b) the delay that would be caused by proceeding on summons could or might expose the prescribed person to physical injury.

32/2004
S. 5.

(2) An occupation order made on an *ex parte* application shall be an interim order and shall be served personally on the respondent.

(3) Where the Court grants an occupation order on an *ex parte* application, the Court shall at the same time make an interim protection order unless it considers that there are special reasons why such an order should not be made.

(4) An occupation order which is made on an *ex parte* application while the prescribed person and the respondent are living together in the same household residence shall expire—

- (a) on the discharge of the order by the Court; or
- (b) on the discharge of an interim protection order made pursuant to subsection (3).

(5) Where an occupation order is made on an *ex parte* application, the respondent may apply for variation or discharge of that order.

Effect of
occupation
order.

9. Where an occupation order is made the prescribed person to whom it relates shall be entitled, to the exclusion of the respondent, personally to occupy the household residence to which that order relates.

Variation of
discharge of
occupation
order.

10. The Court may, if it thinks fit, on the application of either party, make an order—

- (a) extending or reducing any period specified by the Court pursuant to subsection (2) of section 7; or
- (b) varying or discharging any terms and conditions imposed by the Court pursuant to that subsection.

Procedure
relating to
occupation
orders.

11.—(1) Before making an occupation order (other than an interim occupation order) the Court shall direct that notice be given to any person having an interest in the property which would be affected by the order.

(2) The person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and be heard in the matter of the application for the occupation order as a party to that application.

Power of
Court to make
ancillary
order.

12.—(1) Subject to subsection (2), the Court may on or after making an occupation order, make an order granting to the applicant the use of all or any of—

- (a) the furniture;
- (b) the household appliances; and

(c) household effects,
in the household residence to which the occupation order relates for such period and subject to such terms and conditions as the Court thinks fit.

(2) An order made under subsection (1) shall continue in force for a period of three months from the date of the making thereof unless the Court otherwise directs but shall expire before that period if the occupation order expires or is discharged.

PART III. *General*

13.—(1) Every interim order made under this Act on an *ex parte* application shall specify a date for a hearing which shall be as soon as reasonably practicable thereafter to determine whether an order shall be made in substitution for the interim order. Interim orders.

(2) The copy of an interim order which is served on the respondent shall notify the respondent that unless the respondent attends Court on the date specified therein to show cause why an order should not be made in substitution for the interim order, the Court may discharge the interim order and make an order in substitution therefor.

(3) At the hearing referred to in subsection (1) the Court may—

- (a) discharge the interim order;
- (b) discharge the interim order and make an order in substitution therefor; or
- (c) on good cause being shown, adjourn the hearing to such date and place as the Court may specify.

(4) Where a hearing is adjourned under subsection

(3) (c) the Court shall, at the adjourned hearing, exercise either the power conferred by paragraph (a) or (b) of that subsection.

(5) In this section—

“interim order” means an interim protection order or interim occupation order, as the case may be;

“order” means a protection order or an occupation order, as the case may be, not being an interim order.

Conduct of proceedings.

14.—(1) No person shall be present during the hearing of any proceedings under this Act unless such proceedings are criminal proceedings or the person is—

- (a) an officer of the Court;
- (b) a party to the proceedings;
- (c) the attorney-at-law for a party to the proceedings;
- (d) a witness; or
- (e) any other person permitted by the Judge to be present.

(2) Any witness shall leave the courtroom if asked to do so by the Judge.

(3) Nothing in this section shall limit any other power of the Court to hear proceedings *in camera* or to exclude any person from the Court.

Standard of proof.

15. Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

Restriction of publication of proceedings.

16.—(1) Subject to subsection (4), no person shall publish any report of any proceedings under this Act unless he is first granted leave of the Court which heard the proceedings.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty-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 the 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 counsellors or social welfare workers.

17. In any proceedings under this Act, the Court may make an order by the consent of all the parties to such proceedings. Orders by consent.

18. The Court may, on making an order under this Act, recommend that either or both parties participate in counselling of such nature as the Court may specify. Counselling.

19.—(1) Any person aggrieved by— Appeals.

- (a) the making of an order by the Court; or
- (b) the refusal of the Court to make an order,

may appeal to the Court of Appeal.

(2) 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 this section, and every such order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

Protection
of
mortgagee.

20.—(1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the making of the order or if the rights of the person entitled to the benefit arise under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

Matrimonial
Causes Act.

21. This Act shall not affect the power of the Supreme Court to make orders under section 10 of the Matrimonial Causes Act.

Rules of
Court.

22. Rules of Court may be made by the Rules Committee constituted under the Judicature (Resident Magistrates) Act for the purpose of regulating the practice and procedure of the Court in proceedings under this Act providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.