

**DRAFT
DOMESTIC VIOLENCE BILL**

REV III

**LEGAL UNIT
DECEMBER 2007**

REPORT ON DOMESTIC VIOLENCE BILL

Introduction

This report is a pre-requisite to the draft Domestic Violence Bill herewith attached. By ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and complying with the provisions of the Beijing Platform, the Governments of the OECS Member States have committed themselves to the eradication of violence against women in the societies.

Existing Domestic Violence legislation in OECS Member States

In cognisance of the above and in response to the lack of any existing civil and criminal remedies to eradicate domestic violence against women, four Member States of the OECS have enacted legislation aimed at providing relief to victims of domestic abuse perpetrated in the home by spouses.¹ As stated by Ms Roberta Clarke in her study:

“the legislation is modelled on the draft legislation provided by the Caribbean Community (CARICOM) Secretariat as part of its legislative reform project. The approach to domestic violence evident in the legislation emphasises the provision of the civil remedy of injunction relief or protection orders, as opposed to an emphasis on punishment”

Although efforts are made to combat domestic violence, the limited scope of the legislation diminishes its effectiveness; for example:

- (a) there is great dissatisfaction with the mechanisms and responses to protect children from child abuse and particularly incest and to punish those who perpetuate abuse on children;
- (b) there is an under reporting of and a lack of proper data collection as the powers specified pursuant to the Act with respect to the same are non-existent;
- (c) the term “domestic violence” is not sufficiently widely described to include not only spouses and persons who are cohabiting, but also to include children and persons who may be in a visiting relationship;
- (d) the role of the police with respect to arrest and prosecutions for domestic violence are insignificant as their powers under the Acts are not sufficiently widely expressed. Moreover, victim recantation or reluctance to initiate proceedings is reported to assist in giving rise to high levels of police frustration and over time the maintenance of a culture of police inaction;

¹ Roberta Clarke: An Evaluative Study of the Implementation of Domestic violence Legislation: Antigua and Barbuda, St.Kitts and Nevis. Saint Lucia and Saint Vincent and the Grenadines.

- (e) the offence of common assault is a non arrestable offence in the criminal law in the OECS Member States. This creates a situation where a police officer attends to a common assault resulting from domestic violence and the victim is left to the mercy of the perpetrator of the violence. The emerging consensus, as presented by Ms Roberta Clarke in her aforementioned study, for mandatory arrest has been incorporated into the draft Bill herewith attached in order to assist in combating this situation. This has of course taken into consideration adequate constitutional safeguards and measures that have been put in place to ensure that the powers given to the police are not abused. In addition to this, provision is made for adequate counselling and therapy for both parties to the assault.²

Recommendations considered in the preparation of the proposed draft Domestic Violence Bill

In addition to the CRC and CEDAW Convention, and existing legislative precedents of other countries, in preparing the aforementioned draft Bill, this Bill is informed by the study referred to above prepared on behalf of the OECS Member States by Ms Roberta Clarke. This study puts forward the following recommendations for reform in preparing draft legislation with respect to the same:

- (a) It is felt that confining eligibility for protection orders to residential unions omits a large class of persons from protection. Such list of persons eligible to make an application for a protection order should be extended to persons in visiting relationships and to persons who have a child in common even though the persons have not cohabited. As requested, consideration was given to the legislation in Trinidad and Tobago.
- (b) The legislation should give a wide range of persons the authority to intervene on applications made on behalf of children experiencing domestic violence. Additionally, police officers should be empowered to make applications on behalf of battered spouses. The Trinidad and Tobago legislation was considered as requested in relation to this recommendation.
- (c) It was recommended that a comprehensive definition of domestic violence be drafted which takes into account all forms of violence and threats of violence which defines the same to include “physical, sexual, emotional or psychological or financial abuse” and a pattern of behaviour of any kind, the purpose of which is to undermine the emotional and mental well-being of a person. The use of financial abuse is based on the understanding that many perpetrators of domestic violence use the withholding of money or the taking away of money as a method of control over the victim.
- (d) The jurisdiction to deal with domestic violence should be extended to a family court with a consolidated magisterial and high court jurisdiction. Such a court

² This was one of the concerns expressed by Ms Clarke in her study that was deemed to be necessary if mandatory sentencing were to be considered.

should be staffed by a Judicial Officer and have extensive and specially trained social services support. Such a court would command greater respect not only from litigants but also from police officers who would have a specific role in enforcing court orders. The reception and layout of the court for the making of applications for protection orders should be located in areas away from the general administrative offices and the administrative staff should be specially trained to ensure an understanding of the dictates of confidentiality and the ethics of the service provider in this area.

- (e) The use of affidavit evidence is recommended in the appropriate case. This can clearly set out the applicant's case, giving the respondent full notice of the allegations which he or she must meet. The establishment of a legal aid service was also recommended, this is however outside the scope of this draft Bill.
- (f) To combat the problem posed by insufficient service of process, it is recommended that a wider range of service methods be considered. While it is preferable that applications be served by bailiffs or police officers, provision should be made for service by persons other than bailiffs or police officers. Forms of substituted service which can be considered include service by registered mail to the last known address and, as is done in Trinidad and Tobago, service by newspaper publication.
- (g) Rules of procedure should be developed by the court which mandates an *inter partes* hearing within specified days of the date of an application made without the knowledge of the respondent. Such a provision should not affect or limit the court's power to hear urgent cases in the shortest possible time frame. Statutory guidelines should also be given of the return date for *inter partes* hearings for the continuation of interim protection orders.
- (h) It is recommended that a copy of the application as well as the affidavit of service be provided to the respondent.
- (i) Greater latitude should be given to the court in terms of the orders which it may grant and the orders should be capable of extension to agents of the respondent. The subject matters of the orders should also be reviewed and extended to include a range of financial orders including maintenance, compensation for loss of earnings, medical and dental expenses, accommodation expenses, and legal costs, including those associated with applications under the draft Bill.
- (j) The legislation should set out the matters to be considered in determining whether to grant an order. The Trinidad and Tobago model was recommended.
- (k) The legislation should give the court power to make custody and access orders and set out guidelines for the exercise of the court's discretion.
- (l) The court should not attempt to mediate the parties through counselling orders.

- (m) A notice which explains the effect of an ex parte order should be considered and should notify the respondent that if he or she does not appear at the court hearing on the date specified in the order, the court may grant a final order or contain a penal clause that specifies the consequences of failure to comply with the order, including not only the breach of order consequences but also that wilful violation constitutes a crime and can result in immediate arrest and further punishment.
- (n) A power of arrest should be attached to all orders made by the court under which a police officer may detain and arrest someone who on reasonable grounds he or she believes to have committed or is committing a breach of an order.
- (o) There is the need to strengthen police response by clear established guidelines for conduct. These may include non arrest duties for providing victim assistance such as informing rights, transporting to medical facility or shelter, or help with removing from property, training on issues relating to domestic violence. Mandatory police reporting and tabulation of domestic violence incidents for the continuous evaluation of police efforts.
- (p) There is also the need for the development of a data collection system.

The draft Bill herewith attached seeks to consider and incorporate the recommendations listed above.

DOMESTIC VIOLENCE BILL

EXPLANATORY NOTES

The objects of this Bill is stated in its Long Title which provides that the Bill seeks to:

“provide greater protection for victims of domestic violence and to make provision for the granting of protection orders and for matters incidental thereto and connected therewith”.

Recognising that domestic violence is a serious crime against society; that many persons are regularly beaten, tortured, and in some cases even killed by their partners or cohabitants and that many victims come from various social, economic, cultural, ethnic and religious backgrounds and that children suffer deep and lasting emotional effects from domestic violence, even when they are not assaulted, this Bill is seen as an absolute necessity in [] where acts of domestic violence are on the rise. The Bill recognizes that women form the majority of victims of domestic violence and that domestic violence is an obstacle to achieving gender equality.

Part I of the Bill provides the preliminary provisions and contains *Clauses 1-4*. *Clause 1* provides for the Short Title and Commencement. *Clause 2* provides for the interpretation section which defines the words and phrases to be used throughout the Bill.

It is important to note that the narrow interpretation given to the term “domestic relationship” has been broadened in *Clause 1* and provides that:

“domestic relationship” means a relationship between an applicant and a respondent in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they were cohabitants or former cohabitants;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child, whether or not at the same time;
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they would be family members related by affinity if the persons referred to in paragraph (b) were, or were able to be married to each other;
- (f) they are or were in an engagement, dating or visiting relationship which includes but is not limited to an actual or perceived romantic, intimate or sexual relationship of any duration; or
- (g) they share or shared the same household or residence”.

The term “domestic violence” is defined as follows:

“domestic violence” means any controlling or abusive behaviour that harms the health, safety or well-being of the applicant or any child in the care of the applicant and includes but is not limited to the following:

- (a) physical abuse or threats of physical abuse;
- (b) sexual abuse or threats of sexual abuse;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to or destruction of property; or
- (i) entry into the applicant’s residence without consent, where the parties do not share the same residence”.

Clause 3 of the Bill gives the police officer on arrival at the scene of an incident of domestic violence, a duty to inform the victim and the perpetrator of his or her rights.

Clause 4 of the Bill provides for an arrest by a police officer without a warrant subject to **Clause 20**. As stated in the report, but its importance is worth reiterating, the offence of common assault is not an arrestable offence under the criminal law. As a result, this creates a situation whereby, when a police officer responds to an allegation of common assault resulting from domestic violence, the victim may be left to the mercy of the perpetrator of the violence. The Bill seeks to address this situation by providing that a police officer may without warrant arrest any person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an act of domestic violence.

Part II of the Bill provides for protection orders and contains **Clauses 5-17**.

Clause 5 makes provision for the application for a protection order. Victims of domestic violence may be disempowered, in light of this, an application for a protection order may be brought on behalf of such victims by any person, including [a police officer or] an approved social worker, who has a material interest in the well-being of the victim.

Clause 6 of the Bill makes provision for the Court to issue an interim protection order. Since the most dangerous time for any domestic violence victim is the time of separation from the perpetrator of the violence, the Bill provides that the interim protection order must be issued ex parte. The respondent has the opportunity to appear on a return date. If the respondent does not appear on the return date, the interim protection order is confirmed. By virtue of *sub-clause (6) of Clause 6*, an interim order may be made for such period as the Court considers necessary but such period must not exceed twenty- eight days.

Clause 7 makes provision for the terms of a protection order. It provides that:

“7. (1) A protection order issued by the Court pursuant to this Act may prohibit the respondent from:

- (a) committing any act of domestic violence;
 - (b) enlisting the help of any person to commit any such act of domestic violence;
 - (c) entering the shared household, save and except that the Court shall only impose this prohibition only if it appears to be in the interests of the applicant or any child or dependant;
 - (d) entering a specified part of the shared household;
 - (e) entering the residence of the applicant;
 - (f) entering the place of employment of the applicant;
 - (g) preventing the applicant or any child or dependant who normally resides or has resided in the shared household from entering or remaining in the shared household or a specified part of the shared household;
 - (h) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;
 - (i) approaching the applicant within a specified distance; or
 - (j) committing any other act as specified in the order.
- (2) In addition to the conditions stated in subsection (1), the Court may:
- (a) direct that any or all of the conditions of an interim protection order or a final protection order be applied for the benefit of a child or dependant;

- (b) direct that the respondent:
- (i) return to the applicant specified property that is in his or her possession or under his or her control;
 - (ii) pay emergency monetary relief to the applicant;
 - (iii) pay interim monetary relief to the applicant for the benefit of a child or dependant, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other law;
 - (iv) immediately vacate any shared household for a specified period, whether or not the shared household is owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - (v) make or continue to make payments in respect of rent or mortgage payment for premises occupied by the applicant having regard to the financial needs and resources of the parties; or
 - (vi) or the applicant or both, receive professional counselling or therapy from any person or agency or from a programme which is approved by the Minister in writing”.

As noted, the Bill clearly spells out the terms which may be contained in a protection order. In times of crisis, financial matters are often a cause of great distress to victims of domestic violence. The Bill provides that the court may impose on the respondent certain obligations as to the discharge of rent or mortgage payments, order the respondent to pay emergency monetary relief, or order the respondent to pay educational expenses. Children should not become the contact point through which the respondent can regain control over the applicant. Contact with a child by the respondent may therefore be refused or structured contact with the child may be ordered.

Clause 8 provides for the matters to be considered by the Court in determining whether or not to impose one or more of the prohibitions specified in *Clause 7*.

Clause 9 contains provisions regarding seizure of arms and dangerous weapons in domestic violence situations.

Clause 10 makes provision for the service of notice of proceedings.

Clause 11 makes provision for service other than personal service.

Clause 12 makes provision for the power of the Court to issue a final protection order.

By virtue of *Clause 13*, where the Court proposes to make an interim protection order or a final protection order, and the respondent is before the Court, the Court has the duty to explain to the respondent the nature, terms and consequences of the order.

By virtue of *Clause 14*, the respondent shall not be bound by a final protection order unless he or she has notice of the said order.

Clause 15 provides for variation and revocation of an interim protection order or a final protection order.

Clause 16 makes provision for the service of a protection order.

Clause 17 makes provision for the enforcement of interim protection order and a final protection order and provides a penalty for the breach of any such order.

Part III provides for police powers of entry and arrest and contains *Clauses 18-24*.

Clause 18 makes it mandatory for a police officer to respond to every complaint or report alleging domestic violence whether or not the person making the complaint or report is the victim. The police officer also pursuant to the provisions of this clause has a duty to complete a domestic violence report which shall form part of a Domestic Violence Register to be maintained by the Commissioner of Police.

Clause 19 makes provision for the issue of a warrant of arrest.

Clause 20 makes provision for the powers of a police officer to arrest without a warrant.

Clause 21 places a duty of a police officer who has entered the premises pursuant to *Clauses 4, 19 and 20(1)* to assist a victim of domestic violence.

Clause 22 provides for a warrant of arrest and procedure upon arrest of a respondent where the Court issues an interim protection order. The Bill provides that, in granting an interim protection order, the Court shall issue a suspended warrant for the arrest of the respondent which remains in force unless the interim protection order is set aside. The applicant is furnished with the original warrant of arrest and provision is made for a second or further warrant of arrest. When the respondent has breached the protection order a police officer must execute the warrant of arrest. Provision is also made for arrest upon receipt of an affidavit where the warrant of arrest has been lost or destroyed. An arrested respondent shall not be released unless a court orders release, and the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interest of justice permit his or her release from detention in custody. The Bill provides that the respondent be criminally charged for breaching the protection order and also with any other offence resulting from a complaint lodged by the applicant against the respondent.

Clause 23 provides for the powers of arrest where a final protection order is in force.

Clause 24 make provisions for the existing criminal law to apply in relation to offences committed pursuant to this Bill.

Part VI provides for Miscellaneous provisions and contains *Clauses 25-38*.

Clause 25 makes provision for the conduct of proceedings.

Under *Clause 26*, in any proceedings pursuant to this Bill, other than criminal proceedings, the Court may receive such evidence as it thinks fit [whether it is otherwise admissible in a court of law].

Clause 27 provides that the standard of proof, other than in criminal proceedings, shall be decided on a balance of probabilities.

Clause 28 provides for the restriction of publication of reports.

Clause 29 provides for orders to be made with the consent of the parties to a proceeding.

Clause 30 makes provision for appeals.

Clause 31 makes provision for the protection of mortgages.

Clause 32 provides for Rules of the Court to be made by the Chief Justice.

Clause 33 provides for property rights.

Clause 34 places an obligation on a specified group of persons to report ill treatment of children, notwithstanding the provisions of any other law.

Clause 35 makes provision for bail.

Clause 36 makes provision for offences and penalties.

Clause 37 makes provision for regulations and repeal and savings are addressed in *Clause 38*.

DOMESTIC VIOLENCE BILL

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Duty to inform victim and applicant of rights
4. Arrest by police officer without warrant

PART II

PROTECTION ORDERS

5. Person entitled to apply for a protection order
6. Power of Court to issue interim protection order
7. Terms of Protection Order
8. Matters to be considered by Court
9. Seizure of firearm and dangerous weapons
10. Service of notice of proceedings
11. Service other than personal service
12. Filing of affidavits
13. Power to issue final protection order
14. Explanation of orders
15. Respondent to have notice of final protection order
16. Variation and revocation of orders
17. Service of protection order
18. Breach of protection order

PART III

POLICE POWERS OF ENTRY AND ARREST

19. Duties of police officers
20. Issue of warrant
21. Police powers of arrest without warrant
22. Duty of police officer to assist victims

23. Warrant of arrest and procedure upon arrest of respondent where Court issues interim protection order
24. Powers of arrest where a final protection order is in force
25. Existing criminal law to apply

PART IV
MISCELLANEOUS

26. Conduct of proceedings
27. Evidence
28. Standard of proof
29. Restriction of publication of reports
30. Orders by consent
31. Appeals
32. Protection of [mortgage/hypothec]
33. Rules of the Court
34. Property rights
35. Obligation to report ill-treatment of a child
36. Bail
37. [Offences
38. Regulations
39. Repeal and savings

SCHEDULE I

SCHEDULE II

DOMESTIC VIOLENCE BILL

AN ACT to provide greater protection for victims of domestic violence and to make provision for the granting of protection orders and for matters incidental thereto and connected therewith.

BE IT ENACTED [].

PART I PRELIMINARY

Short title and commencement

1. This Act may be cited as the Domestic Violence Act, 200[].
- (2) This Act shall come into operation on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires:

“applicant” means a person who applies or on whose behalf and application is made for an order pursuant to section 5;

“approved social worker” means a person experienced and qualified in social work and approved by the Minister in writing;

“attorney-at-law” means an individual who has been admitted to practice law under the Legal Professions Act, [] No. [] of [];

“child” means a person under the age of eighteen years who:

- (a) normally resides with the applicant or, whether or not the child is a child of the applicant and the respondent or either of them; or
- (b) is an adopted child, a stepchild, or a child who is treated as a child of the family; or
- (c) is related by consanguinity or affinity to either the applicant or the respondent; or
- (d) is in the care and protection of the applicant or the respondent; or
- (e) is a person of whom either the applicant or the respondent is a guardian; or

- (f) is or has been a member of a shared household; and
- (g) is not a person who is or has been married;

“Court” means the [Family] Court;

“cohabitant” means a person who is living or has lived with a person of the opposite sex as a husband or wife although not legally married to that person;

“dependant” means a person over the age of eighteen years who by reason of physical or mental disability, age or infirmity is reliant on either the applicant or the respondent for his or her welfare;

“Director’ means the Director of [Social/ Family Services];

“domestic relationship” means a relationship between an applicant and a respondent in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they are cohabitants or were cohabitants;
- (c) they are the parents of a child or are persons who have or had parental responsibility for the child, whether or not at the same time;
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they would be family members related by affinity if the persons referred to in paragraph (b) were, or were able to be married to each other;
- (f) they are or were in an engagement, dating or visiting relationship which includes but is not limited to an actual or perceived romantic, intimate or sexual relationship of any duration; or
- (g) they share or shared the same household or residence;

“domestic violence” means any controlling or abusive behaviour that harms the health, safety or well-being of a person or any child and includes but is not limited to the following:

- (a) physical abuse or threats of physical abuse;
- (b) sexual abuse or threats of sexual abuse;

- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to or destruction of property; or
- (i) entry into the applicant's residence without consent, where the parties do not share the same residence;

“economic abuse” means the avoidance of financial obligations owed to the applicant and child or a dependant of the respondent, including mortgage or rental obligations;

“emergency monetary relief” means compensation for monetary losses suffered by an applicant and any child at the time of the issue of an interim protection order as a result of the domestic violence, including:

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) moving, relocation and accommodation expenses; or
- (d) household necessities and other interim expenses;

“emotional, verbal and psychological abuse” means degrading or humiliating conduct by the respondent to the applicant, including:

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause emotional pain;
- (c) the repeated exhibition of behaviour which constitutes serious invasion of the applicant's privacy, liberty, integrity or security;

“firearm” shall have the meaning assigned to it under the [Firearms Act, [] No of []];

“harassment” means engaging in a pattern of conduct that induces the fear of harm, including:

- (a) watching or loitering outside of or near the building or place where the applicant resides, works or carries on business, studies or happens to be;
- (b) repeatedly making telephone calls or inducing another person to make telephone calls to the applicant, whether or not conversation ensues;
- (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the applicant;

“interim protection order” means an order made pursuant to section 6;

“intimidation” means uttering, conveying or causing any person to receive a threat which induces fear;

“Judicial Officer” means a Judge or a Magistrate;

“member of the household” means a person who normally resides in the same dwelling house as the applicant or the respondent and is related to the applicant or respondent by blood marriage or adoption;

[“Minister” means the Minister responsible for [Social /Family] Services];

“order” includes an interim protection order and a final protection order;

“police officer” has the meaning assigned to it in the [Police Act];

“physical abuse” means any act of assault;

[“prescribed” means prescribed by the Regulations made pursuant to this Act;]

[“probation officer” means an officer appointed as such by the [Public Services Commission]/ [Probation Services Act, No of];

“protection order” means an interim order issued under section 6 and a final protection order issued under section 12;

“Registrar” means the Registrar of the Court;

“respondent” means a person who is or has been in a domestic relationship with the applicant and against whom the applicant has applied for an order under this Act;

“sexual abuse” means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the applicant;

“shared household” means a household where the applicant and the respondent live or lived together in a domestic relationship;

“spouse” includes a former spouse, a cohabitant or a former cohabitant;

“stalking” includes repeatedly following, pursuing or accosting the applicant;

“victim” means any person who alleges to have been subjected to an act of domestic violence;

“visiting relationship” means a non co-habitational relationship which is otherwise similar to the relationship between husband and wife.

Duty to inform victim and applicant of rights

3. (1) A police officer, at the scene of an incident of domestic violence, or when the incident of domestic violence is reported shall:

- (a) inform the victim of his or her rights in the form set out in Schedule I; and
- (b) hand the victim a printed copy of the information relating to the right of the victim pursuant to paragraph (a).

(2) Upon the report of a breach of a protection order to a police officer by a person or a victim, the police officer shall inform the person or the victim of the right to lodge a concurrent complaint against the respondent if a criminal offence appears to have been committed against the person, the victim or a child.

(3) The Director may inform any person or a victim of the relief available pursuant to this Act.

Arrest by police officer without warrant

4. Subject to section 20, a police officer may arrest any person at the scene of an incident of domestic violence, without a warrant, whom he or she reasonably suspects of having committed an act of domestic violence.

PART II PROTECTION ORDERS

Person entitled to apply for a protection order

5. (1) A person referred to in subsection (2) may apply to the Court, in the form set out as Form I in Schedule II, for a protection order on the grounds that the respondent engaged in domestic violence.

(2) An application for a protection order referred to in subsection (1), may be made by:

- (a) the spouse of the respondent;
- (b) a member of a shared household, either on his or her own behalf or on behalf of any other member of the shared household;
- (c) a child;
- (d) a dependant;
- (e) a parent or sibling by consanguinity or affinity of either the spouse or respondent not being a member of the shared household;
- (f) a person who has a child in common with the respondent; and
- (g) a person who is or has been in a visiting relationship with a person of the opposite sex for a period exceeding twelve months.

(3) An application made pursuant to subsection (1) may be brought on behalf of the applicant by any other person, who has a material interest in the well-being of the applicant, including [a police officer], the Director, a probation officer or an approved social worker, except that the application shall be brought with the consent of the applicant, but such consent shall be dispensed with in circumstances where the applicant is:

- (a) a child;
- (b) a dependant;
- (c) physically or mentally incapacitated by unsoundness of mind or a disability;
- (d) unconscious;
- (e) under the influence of intoxicating liquor or is misusing drugs; or
- (f) a person whom the Court is satisfied is unable to provide the required consent.

(4) Pursuant to subsection (3) (a), a child or dependant may apply for a protection order through:

- (a) a person with whom the child or dependant ordinarily or periodically resides or resided with or is reliant upon for his or her welfare or any adult member of his or her household;
- (b) a parent or guardian or a person who is in *loco parentis* to the child; or
- (c) the Director or other person who has parental responsibility for the child.

(5) The application referred to pursuant to subsection (1) may be brought outside the ordinary hours of the Court or on a day which is not an ordinary day for the sitting of the Court.

(6) The application for an order under this Act must be supported by evidence on affidavit unless the Court otherwise orders and an affidavit must include:

- (a) the facts on which the application is based;
- (b) the nature of the order applied for; and
- (c) the name of the police station at which the applicant is likely to report any breach of the order.

(7) The application made pursuant to this Act may be accompanied by supporting affidavit of any person who has knowledge of the matter concerned.

(8) The applicant may request that his or her physical address be omitted from the protection order.

(9) The application and affidavits shall be lodged with the Registrar who shall forthwith submit the application and the affidavits for consideration of the Court.

(10) In considering an application made pursuant to subsection (1), the Court:

- (a) may require further oral evidence or evidence by affidavit; and
- (b) shall record any oral evidence referred to in paragraph (a).

Power of Court to issue interim protection order

6. (1) If the Court is satisfied that the respondent is committing, or has committed or is likely to engage in conduct that would constitute an act of domestic violence, the Court shall issue an interim protection order against the respondent, in the form set out as Form II in Schedule II.

(2) The Court may issue an interim protection order, pending the hearing and determination of the proceedings for a protection order, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant.

(3) In exercising its powers pursuant to this section, the Court shall not refuse to issue an interim protection order by reason of the fact that the respondent has not been given notice of the proceedings.

(4) An interim protection order issued pursuant this section must be served on the respondent and must call upon the respondent to show cause on the return date specified in the interim protection order as to why the interim protection order should not be confirmed.

(5) The return date referred to in subsection (4) must not be less than ten days after the date of the order.

(6) An interim protection order may be made for such period of time as the Court considers necessary but shall not exceed twenty-eight days.

(7) An interim protection order shall have no effect until it has been served on the respondent in the manner provided for in section 10 (1).

Terms of Protection Order

7. (1) A protection order issued by the Court pursuant to this Act may prohibit the respondent from:

- (a) committing any act of domestic violence;
- (b) enlisting the help of any person to commit any act of domestic violence;
- (c) entering the shared household, except that the Court shall only impose this prohibition only if it appears to be in the interests of the applicant or any child or dependant;
- (d) entering a specified part of the shared household;
- (e) entering the residence of the applicant;
- (f) entering the place of employment of the applicant;
- (g) preventing the applicant, any child or dependant who ordinarily resides or has resided in the shared household from entering or remaining in the shared household or a specified part of the shared household;

- (h) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant as the case may be;
 - (i) approaching the applicant within a specified distance; or
 - (j) committing any other act as specified in the order.
- (2) In addition to the prohibitions referred to in subsection (1), the Court may direct that:
- (a) any or all of the conditions of an order be applied for the benefit of a child or dependant;
 - (b) the respondent:
 - (i) return to the applicant specified property that is in his or her possession or under his or her control;
 - (ii) pay emergency monetary relief to the applicant;
 - (vii) pay interim monetary relief to the applicant for the benefit of a child or dependant, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other law;
 - (viii) immediately vacate any shared household for a specified period, whether or not the shared household is owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - (v) make or continue to make payments in respect of rent or mortgage payment for premises occupied by the applicant having regard to the financial needs and resources of the applicant and the dependant; or
 - (vi) the applicant, or both, receive professional counselling or therapy from any person or agency or from a programme which is approved by the Director in writing.
- (3) The Court may impose any additional conditions which it considers reasonably necessary to provide and protect the safety of the applicant, any child or dependant, including but not limited to an order that a police officer shall accompany the applicant to a specified place to supervise the collection of personal property.
- (4) The Court may direct that any or all of the prohibitions or conditions contained in an order apply for the benefit of a child or dependant.

- (5) The Court may:
- (a) refuse the respondent contact with any child if it is shown that such contact is not in the best interests of the child; or
 - (b) order structured contact with any such child.
- (6) The Court shall not refuse to issue an order under this Act on the basis that:
- (a) a single act has been committed or a single threat has been made by the respondent; or
 - (b) the acts or threats when viewed in isolation, appear to be minor or trivial.
- (7) Where pursuant to subsection (2) (b) (vi) the Court makes an order which includes counselling or therapy, the order must specify:
- (a) that the Court receive written notification from the counsellor or therapist of sessions missed by the applicant, the respondent or both, as the case may be, without reasonable excuse; and
 - (b) the date by which the counsellor or therapist shall submit a report to the Court in respect of the counselling or therapy.
- (8) Where the Court makes an order which includes a direction that the respondent:
- (a) vacate any shared household; or
 - (b) return to the applicant specified property that is in his or her possession or control,
- the Court may, in the same order, if it considers necessary, direct a police officer to remove the respondent either immediately or within a specified time from the shared household, or to accompany the applicant, as the case may be, either immediately or within a specified time to specified premises, in order to supervise the removal of property belonging to the applicant and to ensure the protection of the applicant.
- (9) A protection order may be for such period as the Court considers necessary but shall not exceed three years.
- (10) Where an order contains any prohibitions or directions, the Court shall specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

Matters to be considered by Court

8. In determining whether or not to impose one or more of the prohibitions or issue a direction specified in section 7, the Court shall have regard to the following:

- (a) the nature, history, or pattern of the domestic violence that has occurred and whether a previous interim protection order or a final protection order has been issued;
- (b) the need to protect the applicant and any other person for whose benefit the order has been granted from further domestic violence;
- (c) the welfare of any child;
- (d) the accommodation needs of the applicant and any other person;
- (e) the hardship that may be caused to the applicant as a result of making the order;
- (f) the income, assets and financial obligations of the respondent, the applicant and any other person affected by the order;
- (g) the need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to the family as a unit; and
- (h) any other matter, that in the circumstances of the case, which the Court considers relevant.

Seizure of firearm and dangerous weapons

9. (1) The Court may make an order directing a police officer to seize any firearm or dangerous weapon in the possession of the respondent, if the affidavit made pursuant to section 5 (3) contains information to the effect that:

- (a) the respondent has threatened or expressed the intention to kill or injure any person in a domestic relationship, including himself or herself whether or not by means of the firearm or dangerous weapon; or
- (b) possession of the firearm or dangerous weapon is not in the best interests of the respondent or any other person as a result of the respondent's:
 - (i) state of mind or mental condition;
 - (ii) inclination to violence, whether a firearm or a dangerous weapon was used in the violence or not; or
 - (iii) the use of or dependence on intoxicating liquor or drugs.

(2) The Court shall direct the Registrar to refer a copy of the affidavit made pursuant to section 5 (3) to the Commissioner of Police for consideration in relation to the [Firearms Act], if the Court had ordered the seizure of any firearm pursuant to this Act.

Service of notice of proceedings

10. (1) Upon an application for a protection order pursuant to section 5 (1) and the granting of an interim protection order by the Court, a copy of the application and the interim protection order, together with the notice of the date on which, and the time at which the respondent is to appear before the Court to show cause as to why the interim protection order shall not be confirmed, shall be served on the respondent.

(2) A notice of the proceedings pursuant to subsection (1) shall be issued in the form set out as Form III in Schedule II.

(3) Where an application is filed in respect of a child or dependant, a copy of the application, together with notice of the date on which, and the time and place at which, the application is to be heard, shall as soon as practicable be served on the parent or guardian of the child or dependant or other person with whom the child or dependant ordinarily resides or resides with on a regular basis.

(4) A notice of proceedings which is issued and served under this section shall be deemed to be a summons that is duly issued and served pursuant to the Rules of the Court made under section 32 and shall compel the respondent to appear in Court to answer to the application.

(5) A notice of proceedings issued under this Act may be served on the respondent or his or her agent and the Court shall receive proof of service by affidavit in the form set out as Form IV in Schedule II.

(6) Where the hearing of an application is adjourned because the application and notice of the proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

Service other than personal service

11. (1) Where the Court has not served notice of proceedings pursuant to section 10 or the interim protection order on the respondent personally, it may make an order for substituted service of the notice of the proceedings or interim protection order, as the case may be.

- (2) For the purpose of subsection (1) “substituted service” means service:
- (a) by registered post to the last known address of the respondent;
 - (b) by leaving the document at the last known address of the respondent or his or her closest relative;
 - (c) at the workplace of the respondent;
 - (d) by advertisement in a newspaper of general circulation, which service is deemed to have been effected at midnight on the date of the later advertisement, the cost to be borne by the applicant; or
 - (e) provided in such other manner as the Court may direct.

Filing of affidavits

12. (1) The respondent shall, before the return date, file with the Registrar supporting affidavits showing cause as to why the interim protection order must not be confirmed.
- (2) A copy of the affidavits of the respondent shall forthwith be served on the applicant.
- (3) The applicant, upon receipt of the affidavits may, before the return date, file a replying affidavit together with any supporting affidavits with the Registrar in which shall be stated the reasons why the interim protection order must be confirmed.
- (4) A copy of the replying affidavit of the applicant shall forthwith be served on the respondent.
- (5) On the return date, the Registrar shall submit to the Court the:
- (a) application for the protection order;
 - (b) the interim protection order granted;
 - (c) any supporting affidavits made by the respondent; and
 - (d) any replying affidavits made by the applicant.

Power to issue final protection order

13. (1) Where notice of the proceedings has been served on the respondent in accordance with section 10 or 11 and the respondent fails to appear in person at the time fixed for the hearing, the Court may:

- (a) proceed to hear and determine the matter in the absence of the respondent and issue a final protection order in the form set out as Form V in Schedule II; or
- (b) if the Court is satisfied, having regard to the materials 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.

(2) If the applicant or the person on whose behalf the application is made does not appear either in person or represented by an attorney-at-law, on the return date as stated pursuant to section 6 (4) and (5) and the respondent appears in Court, the Court may:

- (a) dismiss the application;
- (b) having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing on such terms as it considers just; or
- (c) where it is satisfied, having regard to the submissions before it, that it is appropriate for evidence to be given by affidavit pursuant to this section, it may so direct, but the Court shall, on the application of any other party, order the attendance for cross examination of the person making such affidavit.

(3) If the respondent appears on the return date in order to show cause as to why the interim protection order should not be issued or confirmed and the applicant or the person on whose behalf the application is made also appear the Court must proceed:

- (a) to hear the matter and consider any evidence previously received under section 5 (6) and (7); and
- (b) to consider such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.

(4) At the hearing of the matter, the Court may:

- (a) decide the matter on the papers in the absence of either or both of the parties; or
- (b) refer the matter for oral evidence.

- (5) At the conclusion of the hearing pursuant to subsection (4) (a) or (b), the Court:
- (a) may confirm, amend, or set aside the interim protection order; and
 - (b) shall issue a final protection order in the form set out as Form V in Schedule II.
- (6) The Registrar shall forthwith notify the parties of the result and shall:
- (a) serve the original final protection order referred to in subsection (5) (b) on the respondent;
 - (b) serve a certified copy of the final protection order referred to in subsection (5) (b) on the applicant.
- (7) A final protection order shall be for such period as the Court considers necessary but shall not exceed three years.
- (8) Where a final protection order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

Explanation of orders

14. Where the Court proposes to make an interim protection order or a final protection order and the respondent is before the Court, the Court shall explain to the respondent:
- (a) the purpose, terms and effect of the order;
 - (b) the consequences of failing to comply with the order; and
 - (c) the means by which the order may be varied or revoked.

Respondent to have notice of final protection order

15. A respondent shall not be bound by a final protection order issued pursuant to section 13:
- (a) if he or she was not present at the time of the making of the order; or
 - (b) if the order has not been served on him or her personally or in accordance with section 11.

Variation and revocation of orders

16. (1) Where an order is in force, a party to the proceedings in respect of whom the order was made may make an application to the Court in the form set out as Form VI in Schedule II, for an order to vary or revoke the order that is in force.

(2) On an application made pursuant to subsection (1), the Court may by order, vary or revoke the order.

(3) A copy of an application made under this section must be served on each person who was a party to the proceedings in respect of which the original order was made.

(4) In determining whether to vary or revoke an order and issue an order in the form set out as Form VII in Schedule II, the Court shall have regard to the matters specified in section 8.

Service of protection order

17. Where an interim protection order or a final protection order is made or varied by the Court:

- (a) the Registrar shall arrange for the order to be drawn up in the form set out as Form VI in Schedule II and filed with the Court; and
- (b) the Court shall serve a copy of the order on:
 - (i) the respondent;
 - (ii) any other person to whom the order is to apply whether or not the person is a party to the proceedings; and
 - (iii) the police officer in charge of the police station located nearest to the area where the respondent or the applicant resides.

Breach of protection order

18. (1) A person against whom an order has been made or to whom a direction has been issued by the Court, commits an offence if that person:

- (a) has notice of the order or direction; and
- (b) contravenes any provision of the order or fails to comply with the direction.

(2) A person who commits an offence under subsection (1) is liable:

- (a) on a first summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three months;
- (b) on a second summary conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both;

- (c) on any subsequent summary conviction, to a period of imprisonment not exceeding five years.

(3) Where an order contains a direction of the Court pursuant to section 7 that the respondent seek counselling or therapy and it is brought to the attention of the Court that the respondent has refused or neglected to comply with such a direction and the Court finds that such refusal or neglect was unreasonable, the respondent commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

PART III POLICE POWERS OF ENTRY AND ARREST

Duties of police officers

19. (1) A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.

(2) A police officer responding to a domestic violence complaint shall complete a domestic violence report which shall form part of a [Domestic Violence Register] to be maintained by the [Commissioner of Police] in the prescribed manner.

(3) A domestic violence report must be in the form set out as Form VIII in Schedule II and must include but not be limited to:

- (a) the name of the parties;
- (b) the relationship and sex of the parties;
- (c) information relating to the history of domestic violence between the parties;
- (d) the date and time the complaint was received;
- (e) the type of the abuse and the weapon used, if any.

Issue of warrant

20. Where a judicial officer is satisfied, by information on oath, that:

- (a) there are reasonable grounds to suspect that a person on a premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a),

the judicial officer may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time within twenty four hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

Police powers of arrest without warrant

21. (1) A police officer may act in accordance with the provisions of the [Criminal Procedure [Act/Code] where he or she has reasonable cause to believe that a person is engaging in or attempting to engage in conduct which amounts to physical violence and failure to act immediately may result in serious physical injury or death.

(2) This section does not authorise the entry onto premises by a police officer, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (1).

(3) Where a police officer exercises a power of entry pursuant to subsection (1), he or she shall immediately submit a written report to the Commissioner of Police, through the head of his or her division where the incident occurred, and the report shall contain:

- (a) the reasons for entering the premises without a warrant;
- (b) the offence being committed or about to be committed; and
- (c) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.

(4) The report referred to in subsection (3) must be submitted to the Director of Public Prosecutions by the Commissioner of Police within seven days of its receipt by the Commissioner of Police.

(5) Where a complaint is made against a police officer by a person resident in a premises alleging that the entry of the police officer onto the premises pursuant to subsection (1) was unwarranted, the [Police Complaints Commission/Authority] shall investigate the complaint and submit a copy of its report to the Commissioner of Police and the Director of Public Prosecutions within fourteen days of the complaint having been made.

(6) Where the investigation of the [Police Complaints Commission]/Authority] finds that entry made pursuant to subsection (1) was unwarranted, the [Police Complaints Commission/Authority] shall also submit the report to the [Police/Public Service Commission] and such report may form the basis of disciplinary action against the police officer.

Duty of police officer to assist victims

22. Where a police officer has entered on to premises pursuant to sections 4, 20 and 21 (1), the police officer shall:

- (a) assist a person who has suffered injury;
- (b) ensure the welfare and safety of a child or dependant who may be on the premises; and
- (c) prevent any further breach of the law.

Warrant of arrest and procedure upon arrest of respondent where Court issues interim protection order

23. (1) In granting an interim protection order pursuant to section 6, the Court may:

- (a) issue a warrant for the arrest of the respondent, in the form set out as Form IX in Schedule II; or
- (b) suspend the execution of such a warrant, subject to compliance with any prohibition, condition, obligation or order imposed under section 7.

(2) The warrant referred to in subsection (1) shall remain in force until the interim protection order is set aside.

(3) A police officer shall:

- (a) execute a warrant of arrest upon its production and receipt of an affidavit in the form set out as Form X in Schedule II wherein it is stated that the respondent has breached any prohibition, condition or obligation or order imposed pursuant to section 7; or
- (b) arrest the respondent upon receipt of an affidavit by the applicant in the form set out as Form X in Schedule II wherein it is stated that:
 - (i) an interim protection order has been issued pursuant to section 6 or that a final protection order has been issued pursuant to section 13;
 - (ii) a warrant of arrest for the respondent has been issued;
 - (iii) the warrant of arrest has been lost or destroyed; and
 - (iv) the respondent has breached any prohibition, condition, obligation or order imposed pursuant to section 7.

(4) The Court shall issue the applicant with a second or further warrant of arrest upon the applicant filing an affidavit in which it is stated that:

- (a) the respondent has not been arrested; or
- (b) the warrant of arrest issued has been lost or destroyed.

(5) Subject to this Act, the provisions of the Criminal Procedure [Code] [Act] relating to:

- (a) the form and manner of execution of warrants of arrest;
- (b) the arrest;
- (c) the detention, search, release from custody; and
- (d) the criminal prosecution of the respondent;

shall apply with the necessary changes applicable in respect of warrants of arrest issued pursuant to subsection (1).

(6) A respondent arrested pursuant to subsection (3) shall:

- (a) not be released, unless:
 - (i) a Court orders the release; and
 - (ii) the respondent, having been given a reasonable opportunity to do so, adduces evidence which satisfies the Court that the interests of justice permit his or her release from detention in custody;
- (b) be brought before the Court as soon as reasonably possible, but not later than:
 - (i) forty eight hours after arrest; or
 - (ii) at the end of the first Court date, after the expiry of the forty eight hours, if the forty eight hours expire outside the ordinary court hours or on a day which is not an ordinary court day; and
- (c) be criminally charged with:
 - (i) an offence referred to in section 37; and
 - (ii) any other offence resulting from a complaint lodged by the applicant against the respondent.

Powers of arrest where a final protection order is in force

24. Where a final protection order is in force and a police officer believes on reasonable grounds that the respondent has committed or is committing a breach of the final protection order, he or she may arrest and detain the respondent without a warrant.

Existing criminal law to apply

25. (1) Subject to subsection (2), where a person is arrested pursuant to section 20 or 21, the person shall be charged in accordance with the relevant provisions of the criminal law for committing or attempting to commit any of the offences and shall be dealt with accordingly.

(2) Where upon hearing the evidence pursuant to section 13 for the granting of a final protection order, the Court is satisfied that:

- (a) the incident was an isolated one;
- (b) there are circumstances which make it desirable to preserve the family unit; and
- (c) the conduct complained of is not sufficiently grave to warrant the imposition of the order or the penalty, as the case may be;

the Court may, with the consent of the applicant, withhold the granting of a final protection order or the imposition of any penalty as prescribed by law and require the respondent to enter into a bond of good behaviour for a period not exceeding six months.

(3) Where a bond of good behaviour has been entered into pursuant to subsection (2), the Court may prescribe such additional conditions as follows:

- (a) that the parties receive professional counselling, including family counselling;
- (b) that the parties report to a probation officer at certain fixed intervals; or
- (c) that the matter be reviewed by the Court within three months.

(4) A bond of good behaviour entered into pursuant to subsection (2) shall be forfeited if the Court is satisfied that:

- (a) the respondent has continued to engage in conduct amounting to domestic violence against the applicant;
- (b) based on a report from a probation officer, the Director, an approved social worker or a police officer, domestic violence is likely to be perpetrated against the applicant; or

- (c) the applicant has become fearful of the respondent to the extent that he or she is no longer willing to continue the domestic relationship.

PART IV MISCELLANEOUS

Conduct of proceedings

26. (1) The following persons may be present during the hearing of any proceedings pursuant to this Act:

- (a) an officer of the Court;
- (b) parties to the proceedings and their attorneys-at-law;
- (c) witnesses; or
- (d) any other person permitted by the judicial officer to be present.

(2) A witness shall leave the Court room if asked to do so by the judicial officer.

(3) This section shall not limit any other power of the Court to hear proceedings in camera or to exclude any person from the Court.

(4) Where an application is made on behalf of a child, the parent or guardian of that child or the person with whom the child ordinarily resides with on a regular basis shall be entitled to be a party to the proceedings.

(5) This section shall not prevent a child, on whose behalf an application for an order is made, from being heard in the proceedings and where the child expresses his or her views, the Court shall take account of those views having regard to the age and maturity of the child and the ability of the child to express his or her views.

Evidence

27. In any proceedings pursuant to this Act, other than criminal proceedings, the Court may receive such evidence as it thinks fit whether it is otherwise admissible in a court of law.

Standard of proof

28. Every question of fact arising in any proceedings pursuant to this Act, other than criminal proceedings shall be decided on a balance of probabilities.

Restriction of publication of reports

29. (1) Subject to subsections (3) and (4), a person shall not publish any report of proceedings pursuant to this Act, other than criminal proceedings, except with the leave of the Court.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year.

(3) This section does not limit:

(a) the provisions of any other enactment relating to the 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 profession, officers of the public service, police officers, psychologists, marriage counsellors or social workers.

Orders by consent

30. In any proceedings pursuant to this Act, the Court may make any order with the consent of all the parties to the proceedings.

Appeals

31. (1) A person aggrieved by:

(a) an order of the Court; or

(b) the refusal of the Court to make an order;

may, within twenty eight days after the decision of the Court, appeal to the Court of Appeal.

(2) Except where the Court which makes an order pursuant to the provisions of this Act otherwise directs, the operation of such an order shall not be suspended by virtue of an appeal made pursuant to this section, and every order may be enforced in the same manner and in all respects as if an appeal under this section is not pending.

Protection of [mortgage/hypothec]

32. (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 person entitled to the benefit of any [mortgage/hypothec], security, charge or encumbrance affecting the property if:

- (a) the [mortgage/hypothec], security, charge or encumbrance was registered before the order was registered; or
- (b) the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Money payable under any [mortgage/hypothec], security, charge or encumbrance shall not be called up or become due by reason of the making of the order under this Act.

Rules of the Court

33. The Chief Justice may make Rules of the Court:

- (a) to regulate the practice and procedure of the Court with respect to proceedings under this Act; and
- (b) to provide for such matters as are necessary for giving full effect to this Act and for its due administration.

Property rights

34. This Act shall not be construed as altering the rights of a spouse in respect of ownership of any real, personal, movable or immovable property.

Obligation to report ill-treatment of a child

35. (1) A dentist, medical practitioner, nurse, psychologist, social worker, or a teacher who examines, attends to or deals with any child in circumstances giving rise to reasonable suspicion that the child has been subject to any act of domestic violence as a result of which the child suffers from injury, whether single or multiple, shall immediately notify a police officer of the said circumstances.

(2) A person referred to in subsection (1) shall not be liable in respect of any notification given in good faith in accordance with this section.

Bail

36. (1) Where the Court is required to determine whether to grant bail in respect of an offence committed under this Act, the Court shall consider:

- (a) the need to protect the applicant from domestic violence;
- (b) the welfare of a child or dependant where the respondent or the applicant has custody of that child or dependant;
- (c) the welfare of any child or dependant being a member of the household; and
- (d) any hardship that may be caused to the respondent or other members of the family if bail is not granted.

(2) The Court in granting bail, may order that the recognisance be subject to any one or more of the following conditions, as the Court considers appropriate:

- (a) that the respondent not harass or molest or cause another person to harass or molest the applicant;
- (b) that the respondent not be present on the premises in which the applicant works or resides; and
- (c) that the respondent not be in a locality in which is situated the premises in which the applicant works or resides.

(3) Where a police officer believes on reasonable grounds that a person, who has been admitted to bail subject to one or more conditions, has failed to comply with a condition of the recognisance, the police officer may arrest the person without a warrant.

[Offences

37. A person who contravenes any prohibition, condition or obligation or order imposed under this Act and for which a penalty is not stipulated commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.]

Regulations

38. The Minister may make regulations to give effect to this Act.

Repeal and savings

39. (1) [The Domestic Violence (Summary Proceedings) Act] is hereby repealed.

(2) Any application made, proceedings instituted or order made under the Act referred to in subsection (1) shall be deemed to have been made or instituted pursuant to this Act.

SCHEDULE I

DOMESTIC VIOLENCE ACT, [] No.[] of 200[]

(Section 3)

Information to victim and applicant regarding his or her rights

1. You have the right to request the assistance of a member of the [] Police Force in order to protect yourself and your children, and the member is obliged to provide you with information on how to obtain a protection order.
2. You may also request police assistance in locating and taking you and your children to a place of safety, including a shelter, the home of a family member or friend, or any other place of safety.
3. If you or your children are in need of medical treatment, you have the right to request a member of the [] Police Force to assist you in obtaining such medical treatment.
4. A protection order can be obtained from the Court at any time of the day or night and will be served on your abuser free of charge.
5. You may request that your address not be disclosed to your abuser.
6. The abuser can be ordered to pay emergency monetary relief and any or all contact with you or your children may be prohibited.
7. You may also request the Court to convict your abuser or prohibit the abuser from preventing you to enter the shared household. This order is of a temporary nature, and if you wish it to be confirmed, you will be required to appear in Court at a later date.
8. If you and your children require any counselling or support, you should contact [] who can offer services to you and your children.
9. You also have the right to lodge a criminal complaint against the abuser if a criminal offence has been committed against yourself and your children. You may do this now, or at any time in the future.
10. Should you obtain a Protection Order, or lodge a criminal complaint, in which false facts are knowingly alleged, you may be convicted of an offence.

If you do not understand any of the above information, you may request more detail from myself or another member of the [] Police Force that you may be more comfortable with”.

Dated this day of 20[]

Name of Police Officer

SCHEDULE II

FORM I

DOMESTIC VIOLENCE ACT, NO.[] OF 200[]

(Section 5)

APPLICATION FOR PROTECTION ORDER

1. (a) I(full names) with Id. No./ Date of Birth.....with the following particulars:
Residential Address.....
..... (Tel. No).....

Occupation.....
Nature of domestic relationship with the respondent.....
(Hereinafter referred to an the APPLICANT); or
- (b) I(full names) with Id. No./ Date of Birth.....with the following particulars:
Residential Address.....
..... (Tel. No.....

Business Address.....
.....(Tel. No.....

On behalf of:.....(Full names)
(Hereinafter referred to an the APPLICANT)
With Id. No./Date of Birth.....with the following particulars
Residential Address.....
..... (Tel. No.....

Business Address.....
Occupation.....
Nature of domestic relationship with the respondent.....
On whose behalf the application is brought **due to**.....
.....(state relationship or concern)
and whose consent has been obtained (except if the applicant is a child or dependant);

2. **HEREBY APPLY FOR A PROTECTION ORDER AGAINST:**
(Full Names)
 With Id. No./Date of Birth.....with the following particulars
 Residential Address.....

 (Tel. No.....

 Business Address.....
 Occupation.....
 (Hereinafter referred to the RESPONDENT).

3. The following children (if any) have been born from the domestic relationship:

4. **Since the respondent** at or near, and on or
 About the day of.....200 [] committed the following act(s):
**See Annex attached for the affidavit, together with any supporting
 affidavit(s):**

5. **I request that the respondent be ordered**

- (a) Not to commit any act of domestic violence;
- (b) Not to enlist the help of another person to commit any act of domestic violence;
- (c) Not to enter the shared household;
- (d) Not to enter the applicant’s residence;
- (e) Not to enter the applicant’s place of employment;
- (f) Not to prevent the applicant or any child or dependant who normally resides or resides in the shared household from entering or remaining in the shared household or part thereof; or
- (g) Not to enter the applicant’s place of employment
- (h) Not to commit any other act;

As requested and/ or specified in the affidavit(s).

I further request the Court to order that:

- (a) A member of the [] police force is to accompany the applicant to the residence specified in the application to supervise the collection of the Applicant’s personal property;
- (b) A member of the [] Police Force is to seize the arm or dangerous weapon as specified in the affidavit;
- (c) The respondent is to pay the rent or mortgage payments specified in the affidavit;

- (d) The respondent is to pay emergency monetary relief as specified in the affidavit;
- (e) The respondent is to pay the educational expenses as specified in the affidavit;
- (f) the respondent is refused any contact with the child or children as specified in the affidavit;
- (g) The respondent is granted structured contact with the child or children as specified in the affidavit; or
- (h) the address of the applicant's residence shall not be disclosed to the respondent.

7. I am likely to report a breach of the Protection Order at the Station of the [] Police Service.

8. Additional conditions requested as per affidavit:.....

.....
DEPONENT **DATE**

9. I certify that before administering the oath/taking the affirmation I asked the Deponent the following questions and noted his or her answers as indicated below:-

(a) Do you know and understand the contents of the above declaration?
 Answer.....

(c) Do you have any objection to taking the prescribed oath?
 Answer.....

I certify that the Deponent has acknowledged that he or she knows and understands the contents of this declaration which was sworn to/affirmed before me, and that the Deponent's signature/ thumbprint/ mark was placed thereon in my presence.

Dated at.....this.....day of.....200[].

.....
 Judicial Officer

FORM II

DOMESTIC VIOLENCE ACT,[] No.[] of 200[]

(Section 6 (1))

INTERIM PROTECTION ORDER

IN THE [FAMILY] COURT.....

HELD AT..... APPLICATION NO.....

In the matter between:

APPLICANT.....
(Id. No/ Date of Birth.....)

AND

RESPONDENT
(Id. No /Date of Birth.....)

1. Respondent’s particulars.....
Residential Address.....
.....
..... (Tel. No).....

Business Address.....
.....
..... (Tel. No.)

Occupation.....

2. Whereas the Applicant (or.....on behalf of the applicant),
has applied for a protection order against the respondent, as per the affidavit(s) and
record of oral evidence (if any) attached, and after consideration of the application;

3. The Court orders that the application for a protection order be:

3.1 **Dismissed;** or

3.2 **Granted:** and the respondent is ordered:

3.2.1 Not to commit the following act(s) of domestic violence.....

.....
.....
.....
.....

3.2.2 Not to enlist the assistance of any other person to commit the acts of domestic violence specified in paragraph 3.2.1;

3.2.3 Not to enter the shared household at.....
.....

3.3.4 Not to enter the following parts of the shared household.....
.....at.....
.....
.....

3.2.5 Not to enter the Applicant’s residence

3.2.6 Not to enter the applicant’s place of employment at.....
.....

3.2.7 Not to prevent the applicant or any child or dependant who normally resides or resides in the shared household at.....
.....
from entering or remaining in the shared household, or any part thereof;

3.2.8 Not to commit any other act, to wit.....
.....
.....

3.2.9 To make rent or mortgage payments in the sum ofper month;

3.2.10 To pay the sum ofto the applicant as educational expenses.

4. It is further ordered that:

4.1 A member of the police force accompanies the applicant to the following residence in order to supervise the collection of personal property; ie.....

4.2 A member of the police force atseizes the following arm or dangerous weapon in the possession of the respondent ie.....

4.3 The applicant’s address is not to be disclosed to the respondent;

4.4 The respondent is refused any contact with the following children ie
.....
.....

4.5 The respondent is allowed contact with the following children. ie..

.....
on the following basis:.....
.....

4.6 A warrant is authorised for the arrest of the respondent, the execution of which is suspended subject to the respondent’s compliance with the provisions of the protection order as stated above; and

4.7 A copy of this order and the warrant of arrest be forwarded to the police station at.....
once this interim protection order has been served on the respondent.

5. The respondent is furthermore hereby informed of his or her right to appear in the Family Court at.....on the..... day of.....200 []at.....in order to show cause as to why the interim protection order should not be confirmed and made final.

.....
Judicial Officer

.....
Date

FORM III

DOMESTIC VIOLENCE ACT, [] No.[] of 200[]

(Section 10)

NOTICE OF PROCEEDINGS

In the State of []

In the District of.....

BETWEEN

.....**APPLICANT**

AND

.....**RESPONDENT**

TO THE RESPONDENT

An application pursuant to section 5 of the Domestic Violence Act, 200[]for a protection order has been made by.....

(name of applicant)

A copy of the application is attached. The application has been set down for hearing on theday of....., at.....A.M/P.M at.....

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.

.....
[Registrar] of the Court

Dated this.....day of.....

FORM IV

DOMESTIC VIOLENCE ACT,[] No.[] of 200[]

(Section 10 (5))

AFFIDAVIT FOR USE IN PROVING SERVICE OF PROCESS

In the State of []

No.....

Return of service of process in respect of domestic violence offence(s) for the Family Court

Name of applicant.....

Name of respondent.....

Document served.....

Date of service.....

Place of service.....

Mode of service.....

I do swear that the above Return of Service is true and in accordance with the facts of such service.

.....
(Deponent)

Sworn by me.....the above-named Deponent

This.....day of.....

.....
[Registrar] of the Court

FORM V

DOMESTIC VIOLENCE ACT, [] No.[] of 200[]

(Section 13 (1), 13 (5))

FINAL PROTECTION ORDER

IN THE FAMILY COURT OF.....

HELD AT..... APPLICATION NO.....

In the matter between:

APPLICANT:.....

(Id. No./Date of Birth.....)

AND

RESPONDENT:.....

(Id. No./Date of Birth.....)

Whereas the applicant has applied for a protection order; and

After considering the facts of the matter;

The Court orders that the interim protection order be:

1 Confirmed;

2. Amended as follows:.....
.....
.....
.....
.....

3. Set aside

Dated at.....this.....day of.....200[]

.....
Judicial Officer

.....
Date

FORM VI

DOMESTIC VIOLENCE ACT,[] No.[] of 200 []

(Section 16 (1))

APPLICATION FOR VARIATION OR REVOCATION OF INTERIM/FINAL PROTECTION ORDER

In the State of
In the District of.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT

Ihereby apply for a variation/revocation of
(Name of Applicant)

the order made against.....on the
(Name of Respondent)

..... day of....., by the Court (a copy of which is attached to the said application) in
respect of certain conduct or threatened conduct towards

.....
(Name of person who is protected by the order)

I ask for a revocation/ variation of the order in the following terms:
SPECIFY DETAILS OF VARIATION

.....
Applicant

Dated this.....day of.....

FORM VII

DOMESTIC VIOLENCE ACT,[] No.[] of 200[]

Section 16 (4)

ORDER VARYING INTERIM/ FINAL PROTECTION ORDER

In the State of

In the District of.....

The Court, having heard an application made pursuant to **section 16** of the Act by (name of the applicant) in respect of conduct or threatened conduct of (name of respondent) and the Court having on theday of, made an order, a copy of which is herewith attached, prohibiting the respondent from engaging in the conduct specified therein.

NOW the Court on the application of.....does this day Order that the [interim/final] protection order be:

1. REVOKED

(specify effective date of revocation)

2.VARIED AS FOLLOWS:

Specify details of variation

.....
.....

Dated this.....day of.....

.....

Registrar of Court

FORM VIII

DOMESTIC VIOLENCE ACT,[] No.[] of 200[]

(Section 19(3))

DOMESTIC VIOLENCE POLICE REPORT

Station.....Division.....Reference No.

Complaint made by...(surname).....(first name).....

Address.....

Relationship of victim to alleged offender.....

Mode of report.....

Date.....Time.....Diary Reference.....

Recorded by:...(Number/Rank/Name).....

Name of (surname)..... (first name).....

Address.....

Telephone No.....Nature of domestic relationship to alleged offender.....

Sex.....Age..... Occupation.....

Address of employment.....

Name of alleged offender...(surname).....(first name).....

Address.....

Sex.....Age..... Occupation.....

Telephone No.....Nature of domestic relationship to alleged offender.....

Address of employment.....

Name of Witness.....Name of Witness.....

Address.....

Relationship to alleged offender.....

BRIEF FACTS AS REPORTED

.....
.....
.....
.....
.....

Extent of Inquiry.....

Medical report Form Attached (*tick*) Yes No

Instrument used to inflict injury.....

Whereabouts of children at time of incident.....
.....

State whether previous complaints were made (*tick*) Yes No

Date.....time.....Diary Reference.....

Investigator: (Number/Rank/Name).....

Action taken.....
.....

Other previous complaints made

Date.....time.....Diary Reference.....

Investigator: (Number/Rank/Name).....

Action taken.....
.....

Is protection order in existence? (*tick*) Yes No

Date of Issue.....

Comments.....
.....
.....

Duration of protection order.....

ACTION TAKEN WITH RESPECT TO PRESENT REPORT

Date

Time.....

Action taken, by whom.....

Arrest made:

Date of arrest.....Mode of arrest.....

Present status of report.....

CHARGES PREFERRED:

(1).....

(2).....

(3).....

(4).....

STATE REASONS IF NO CHARGES PREFERRED:

.....
.....
.....
.....

.....
Investigator

.....
Supervising officer

.....
Date

.....
(Date)

FORM IX

DOMESTIC VIOLENCE ACT, [] No [] of []

(Section 23 (1))

WARRANT OF ARREST

IN THE FAMILY COURT OF

HELD AT

APPLICATION NO._

In the matter between:

APPLICANT.....

(*Id. No./Date of Birth:)

AND

RESPONDENT.....

(*Id. No./Date of Birth:)

TO ALL POLICE OFFICERS:

Whereas *the attached Interim Protection Order/a Protection Order as attested to by the applicant in the attached affidavit, was granted against the respondent by the Court for the district of on the _day of _; and

Whereas the applicant has stated in the affidavit attached that the respondent has breached (a) condition(s) of the Protection Order;

Therefore you are hereby authorised and ordered to forthwith arrest the respondent in terms of the Domestic Violence Act, [] .

GIVEN UNDER MY HAND AT THIS DAY OF 200[]

.....
JUDICIAL OFFICER

.....
DATE

***Delete whichever is not applicable**

.

FORM X

DOMESTIC VIOLENCE ACT, [] No [] of []

(Section 23 (3))

BREACH OF PROTECTION ORDER

IN THE COURT OF

HELD AT

APPLICATION NO....._

In the matter between:

APPLICANT.....

(*Id. No./ Date of Birth:)

AND

RESPONDENT.....

(*Id. No./Date of Birth:)

1.1 (Full Names)

(*Id. No./Date of Birth:)

Residential Address:.....

(Tel. No.).....

Business Address:.....

(Tel. No.).....

Occupation:.....

(Hereinafter referred to as the APPLICANT)

Hereby declare under **oath/solemnly affirm that:**

A Protection Order was granted on the _ day of _ in the Court at.....

Against.....(Full Names)

Residential Address:.....

(Tel. No.).....

Business Address:.....

(Tel. No.).....

Occupation:.....

(Hereinafter referred to as the **RESPONDENT**)

2.*A copy of the Protection Order (indicating what orders were made), and the original Warrant of Arrest is attached.

3*A copy of the Protection Order and/or the original Warrant of Arrest cannot be attached for the following reasons:

.....
.....
.....

In the said Protection Order the respondent was ordered:

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....

4. The respondent has breached the Protection Order (which has not been set aside), in that *he /she on the _ day of

.....
Signature of Deponent

.....
Date

5. I certify that before administering the *oath/taking the affirmation I asked the Deponent the following questions and noted *his/her answers in *his/her presence as indicated below:

(a) Do you know and understand the contents of the above declaration'?

Answer.....

(b) Do you have any objection to taking the prescribed oath?

Answer.....

(c) Do you consider the prescribed oath to be binding on your conscience?

Answer.....

I certify that the Deponent has acknowledged that *he/she knows and understands the contents of this declaration which was *sworn to/affirmed before me, and that the Deponent's *signature/thumb print/mark was placed thereon in my presence.

Dated at this day of

.....
Judicial Officer