

## **DOMESTIC VIOLENCE:**

We have all heard about the Domestic Violence Act.

Act defines same to include:-

**1.** Physical, sexual emotional, psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household or dependant.

### **EMOTIONAL:**

**2.** Emotional or psychological abuse means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well being of a person such as:-

- (a) Intimidation, threats, abusive language;
- (b) Persistent following of a person from place to place;
- (c) Depriving person of use of his/her property;
- (d) Watching, besetting of a place where person resides, walks, carries on business or happens to be;
- (e) Interfering with, damaging property or person;
- (f) Forced confinement of the person (however long or short it might be);
- (g) Persistent telephoning of the person, at the person's place of residence or work;
- (h) Making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person.

### **3. FINANCIAL ABUSE:**

A pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependence – I would add deprivation.

**4. PHYSICAL ABUSE:**

Any Act or Omission which causes physical injury and includes the commission of or an attempt to commit any of the offences listed in the Schedule to Act

Such as:

- (1) Assault and Battery;
- (2) Assault on children, women, Id, infirmed, sickly persons;
- (3) Aggravated assaults causing wound or harm;
- (4) Violent or obscene language/disturbance of peace;
- (5) Possession of weapons intended for crime;
- (6) Throwing stones or other missiles;
- (7) Inciting animals to attack;
- (8) Misuse of telephone facilities and false telegrams;
- (9) Setting fire etc;
- (10) Attempted murder;
- (11) Shooting or wounding ect;
- (12) Rape ect;

**5. SEXUAL ABUSE:**

Sexual contact of any kind that is coerced by force or threat of force, the commission to attempt to commit any of the offences under Sexual Offences Act.

**6. SPOUSE-** includes a former spouse, a cohabitant or former cohabitant.

**7. WHO MAY APPLY:**

- (1) Spouse;
- (2) Member of a household of the Spouse or Respondent- on own behalf of on behalf of any other member of the household;
- (3) Child- include by consanguinity or affinity of either Spouse or Respondent, child who is charge of either Spouse or Respondent Guardian, has been a member of household of Spouse or Respondent;
- (4) A dependant;

- (5) That parent or sibling by consanguinity or affinity of either the Spouse or Respondent, but who is not a member of the household;
- (6) A person who has a child in common with the Respondent;
- (7) A person who is or has been in a visiting relationship with a person of the opposite sex for a period exceeding twelve months;
- (8) A person with whom a child or dependant normally lives regularly or any adult member of that household;  
or parent or guardian or a person in loco parentis to the child;
- (9) A Police Officer/Probation Officer or approved Social Worker may also apply for order on behalf;  
Any person who may apply or for any person or child in a residential Institution.

**8. COURT POWERS:**

- (1) **Test** – is on a balance of probabilities.  
Once Court is satisfied Domestic Violence has occurred, it will issue a Protection Order/Restraining Order.
- (2) **Satisfaction-** Court must be satisfied that the Respondent:
  - (a) is engaging in or has engaged in Domestic Violence against the Applicant.
  - (b) Respondent is likely to engage in such conduct.

Accordingly and in either (a) or (b) and with regard to all the circumstances that the Order is necessary for the protection of the Applicant.

**9. PROTECTION ORDER may prohibit the Respondent from inter alia:-**

- (1) Engaging or threatening to engage in conduct which would constitute a Domestic Violence offence towards the Applicant;
- (2) Being on or around premises specified in the Order where the Applicant requests eg. School, residence, place of employment, business;
- (3) Being in a locality specified in the Order;
- (4) Engaging in direct or indirect communication with the Applicant;
- (5) Taking possession, converting, damaging, dealing with property that the

- Applicant may own or have interest in or is reasonably used by the Applicant;
- (6) Approaching the Applicant within a specified distance;
  - (7) Causing or encouraging another person to engage in conduct that would amount to Domestic Violence offence;
  - (8) Direct that the Order be applied to child or dependant of Applicant or Respondent;
  - (9) Direct for return of property to the Applicant that is in the Respondent's possession or under his/her control;
  - (10) Pay compensation for monetary loss to Applicant as direct result of Respondent's Domestic Violence;
  - (11) Pay interim monetary relief to the Applicant for benefit of Applicant and any child where there is no existing Order relating to maintenance until such time of determination of obligation;
  - (12) Immediately vacate any place or residence for a specified period whether or not the residence is jointly owned or leased by the Respondent or Applicant or solely owned or leased by the Respondent or the Applicant;
  - (13) Relinquish to the Police any firearm licence, firearm or other weapon which the Respondent may have in his/her possession or control;
  - (14) Make or continue payments in respect of rent or mortgage payments for premises occupied by Applicant;
  - (15) Ensure that reasonable care is provided in respect of a child or dependant person;
  - (16) Applicant, child, Respondent receive professional counseling or therapy from any person or agency approved by the Minister in writing;
  - (17) Any other directions, prohibitions or arrangement parties may consent to.

**10. COUNSELLING:**

Where counseling is directed, the prescribed Counselor/Therapist must notify Court of any sessions missed without reasonable excuse.

Counselor/Therapist must submit report to Court and include a prognosis for recovery.

**11. COMPENSATION:**

- (1) Where compensation is directed it includes, but is not limited to:-
- (1) Loss of earnings;
  - (2) Medical and dental expenses;
  - (3) Moving and accommodation expenses;
  - (4) Reasonable legal costs including cost of an application pursuant to the Act.
- (2) Court has jurisdiction to award compensation not exceeding \$15,000.00-
- (3) Payments of compensation can be paid into Court for Applicant.

**12. REMOVAL:**

(1) Where Court directs removal of Respondent from any place or residence or the return of items of property in his/her possession the Court may in said Order direct the Police to remove the Respondent either immediately or within a specified time from the said place or residence or

To accompany the Applicant as the case may be either immediately or within a specified time to a specified premises in order to supervise the removal of property belonging to the Applicant and ensure the protection of that person.

(2) Where Court determines to impose the prohibition of removal:-

It shall consider:

- (a) Nature, history or pattern of Violence whether previous Protection Orders or Interim Order has been issued;
- (b) Need to protect the Applicant and any other person from further violence;
- (c) The welfare of the child;
- (d) The accommodation needs of Applicant and any other person;
- (e) Any hardship that may be caused by making said Order;
- (f) Income, assets and financial obligations of the Respondent, Applicant and any other person affected;

- (g) The need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to family unit;
- (h) Any other matter in the circumstances of the case, the Court considers relevant.

**13. THE FAMILY LAW ACT:**

Court has the power also to at the same time, make any Order pursuant to Sec.25 of the Family Law Act inter alia, empowers the Court to:-

- (1) Maintenance Order for Applicant;
- (2) A Lump Sum Order to be paid to the Applicant;
- (3) Maintenance Order for child, periodical payments;
- (4) Lump Sum Order for child;
- (5) An Order that the Applicant be no longer bound to cohabit with the Respondent (which provision while in force has same effect as Judicial Separation) on the ground that the Respondent has behaved in such a way that the Applicant cannot longer be expected to live with him/her;
- (6) Order legal custody of any minor child or children under sixteen years of age be granted to Applicant.

Subject of course to all the legal considerations and exercise of discretion required under the Section and by the law on the provision of maintenance and lump sum.

A breach of the Order in this regard would be a breach of the Order under Sec.25 of the Family Law Act and would be dealt with as prescribed by that Act.

(Attachment of Earnings) (issue of warrant) distress upon property, liable to fine.

**14. DURATION;**

Protection Order maybe made for such period as the Court deems necessary but shall not exceed three years.

**15. INTERIM ORDER:**

- (1) Sec.8-Court can make an Interim Order before, during the hearing of the application whether or not the Respondent is present at proceedings or the Respondent has been given Notice of proceedings.
- (2) An Interim Order may be made for anytime up to 21 days and may contain any or all of the statutory prohibitions set out in Section 6 of the Act, once an Interim Order is made by the Court.
- (3) The Respondent is summoned to appear as soon as is possible at such further hearing the Interim Order may be extended for a further period until date of hearing is fixed for full hearing of matter, such period not to exceed forty-two days from date of application. Therefore, upon filing of application, case should be heard within forty-two days.
- (4) At hearing of case, Court can revoke Interim Order, hear application and grant full Protection Order even in the absence of Respondent.

**16. UNDERTAKINGS:**

- (1) Court can accept an Undertaking, is as good as an Order, same effect;
- (2) Where an Undertaking is given the Court shall make a Protection Order or Interim Order, as it deems fit in respect of the Undertaking;
- (3) Duration cannot exceed 3 years.

**17. APPLICATION:**

The Act is strictly the purview of the Magisterial Court and can only be applied for in the jurisdiction of the Magistrate's Court.

At the Magisterial Division clerks will help with format of application.

**18. PROCEEDINGS:**

- (1) Proceedings under this Act are held in camera, unless Court directs otherwise;
- (2) Where child is subject of Order- any person who has defacto custody, care and control, guardian, foster parent etc. are allowed to attend and will be heard;
- (3) Child or dependant can speak, views and opinions will be heard and considered and shall take account of views having regard to age and maturity;

- (4) Upon filing application- case should be called within 7 days.  
Notice of Proceedings must be served on Respondent. Once served is a Summons for Respondent and compels the person to attend Court, to answer as if it were a Complaint filed under Summary Courts Act;
- (5) Once Application is served and Respondent does not appear, Court may proceed to determine the matter in the Respondent's absence,  
or  
Matter can be adjourned and a warrant for the Respondent's apprehension issued for him/her to be brought before the Court where the Court is satisfied that the same is necessary having regard to the material before it;
- (6) Sec.14:  
Where the Applicant and any person on whose behalf application is made does not appear in Court, but Respondent is present, the Court may:-
- (1) Dismiss application;
  - (2) Upon reasonable excuse adjourn the matter upon terms deemed fit;
  - (3) Where satisfied, having regard to submissions before it allow for evidence to be given by affidavit- on the application on any party on the Applicant's behalf, order the attendance of any party making affidavit for cross-examination;
- (7) Effect of Orders shall be explained to Respondent:-
- (1) The purpose of Order;
  - (2) The consequence of failing to comply with same;
  - (3) Means by which Order may be varied or revoked.

**19. SERVICE OF ORDERS:**

- (1) Copy of Order is served on Respondent;
- (2) Any other person to whom the Order shall apply whether party to matter or not;
- (3) And on the Police Officer in charge of the Station located nearest to the area where the Respondent or Applicant resides;
- (4) Where it relates to Real Property filed in Land Registry by Applicant as a Lis Pendens;



- (5) Where Court not able to serve Order, it can be served by substituted means:-
- (1) Registered post to last known address of Respondent;
  - (2) Leaving document at last known address of Respondent;
  - (3) Service by advertisement in two daily newspapers, costs to be cost of Applicant;
  - (4) Such other manner the Court deems fit.
- (6) A Respondent must have Notice of the Order to be bound by it.
- (7) Orders can be varied or revoked.

**20. ENFORCEMENT:**

- (1) Once there is Notice of Order, if the Respondent contravenes any provision of the Order or fails to comply with any direction, he/she commits an offence and is liable:-
- (1) On first conviction to fine not exceeding \$9,000.00 or imprisonment for a period not exceeding three months;
  - (2) Second conviction to a fine not exceeding \$15,000.00 or imprisonment for a period of up to 24 months or both;
  - (3) On any subsequent conviction to a period of imprisonment not exceeding 5 years;
  - (4) Where Court directed for Therapy or Counseling and the Respondent refuse to comply with same and the Courts find that such refusal or neglect was unreasonable. The Respondent commits an offence and is liable to a fine of \$3,000.00.

**POLICE:**

- (1) A Police officer shall respond to every complaint or report alleging Domestic Violence whether made by person making Complaint/Victim.
- (2) Upon response to complaint, Police must complete a Domestic Violence Report-form part of National Domestic Violence Register to be maintained by Police Commissioner.

(3) Magistrate can issue Warrant giving Police in writing power to enter premises specified in the Warrant at any time within 24 hours of issue of Warrant- In case where there are reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury in a situation amounting to Domestic Violence and the Police have been refused entry in order to give assistance to victim.

(4) **Section 23:**

(1) A Police can act in accordance with powers under the Criminal Law Act where there is reasonable cause to believe that a person is committing Domestic Violence offence which may result in injury or death to a person.

(2) Can enter for that specific purpose only and in order to give assistance.

(3) Where same is conducted an immediate Report to Police Commissioner must be submitted and the Police Commissioner shall submit said Report within 7 days to DPP.

(5) Where the Police Officer exercise power under 22./23 of Act, he shall:-

(a) Give assistance to a person who has suffered injury;

(b) Ensure the welfare and safety of a child;

(c) Prevent any further breach of law.

(6) **Section 24:**

Where there is an Order in force and the Police Officer believes on reasonable grounds that the Respondent is committing or has committed a breach of Order, the Police can detain and arrest said person without Warrant.

**EXISTING CRIMINAL LAW:**

(1) Where a person is arrested under Section 22/23;

(2) 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 listed in the Schedule;

(3) So may have a situation where charge under one law still have Protection Order.

4. **Section 25.**

- (1) Where person arrested under 22/23- Protection Order may not be granted depending if incident was in isolation, family considerations, not grave conduct etc.

5. **Section 27.**

**BAIL ACT:**

- (1) Notwithstanding the Bail Act- where Court is required to determine whether to grant Bail in respect of an offence under the Act, the Court shall consider:-
- (1) Need to protect the Applicant;
  - (2) Welfare of child/victim;
  - (3) Any hardship that may be caused to the Defendant or other members of the family if Bail is not granted.
- (2) In Granting Bail- following conditions may be ordered:-
- (1) That Defendant not harass or molest or cause a Domestic Violence offence
  - (2) That the Defendant not be on the premises in which Victim resides;
  - (3) That the Defendant not be in locality victim works or resides etc.