



**DOMESTIC VIOLENCE BILL**

**2015, NO.**



## **DOMESTIC VIOLENCE BILL**

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“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 each other;

“dependant” includes 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; or who is over the age of 18 years but is under the age of 25 years and is receiving full time education at an educational institution or undergoing training for a trade, profession or vocation.

“Commissioner of Police” means the Commissioner of Police appointed pursuant to Police Act, Cap. 330;

“Court” means the Magistrates court or any other court of competent jurisdiction;;

“cyberstalking” means the use of the Internet or other electronic means to stalk or harass a person and in particular includes:

- (a) using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act anonymously or repeatedly whether or not conversation occurs; or
- (b) threatening to inflict injury on the person or property of the person communicated with or any member of his or her family or household;

with intent to harass, intimidate, torment, or embarrass a person.

“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 cohabit or cohabited with each other in a relationship of some permanence;
- (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;

“domestic violence” means:

(1) 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.

(2) For the purposes of the definition of domestic violence, threats, intimidation, harassment or stalking include threats, intimidation harassment or stalking or and cyberstalking on the Internet or by electronic means.

“economic abuse” includes-

- (a) the deprivation or threatened deprivation of any or all economic or financial resources to which the applicant is entitled under the law or which the applicant requires out of necessity, including household necessities for the applicant and any child, and mortgage bond repayments of the shared household; or
- (b) the disposal or threatened disposal of household effects or other property in which the applicant has an interest;

“emergency monetary relief” includes-

- (a) compensation for monetary losses suffered by the applicant and any child at the time of the issue of an Interim Protection Order as a result of domestic violence;
- (b) loss of earnings;
- (c) medical and dental expenses;
- (d) moving and accommodation expenses; or
- (e) interim expenses;

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

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause emotional pain;
- (c) the repeated exhibition of obsessive possessiveness, or jealousy which is such as to constitute serious invasion of the applicant's privacy, liberty, integrity or security;

“firearm” shall have the meaning assigned to it in the Firearms Act, Cap. 171;

“harassment” includes-

- (a) engaging in a pattern of conduct that induces the fear of harm ;
- (b) 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;
- (c) repeatedly making telephone calls or inducing another person to make telephone calls to the applicant, whether or not the conversation ensues;



- (d) repeatedly sending electronic mail or text messages to the applicant;
- (e) repeatedly sending, delivering or causing the delivery of letters, packages, facsimiles, or other objects to the applicant's home or place of work;

"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;

"Minister" means the Minister responsible for Social Services;

"order" means an Interim Protection Order or a Final Protection Order;

"police officer" has the meaning assigned to it in the Police Act, Cap. 330;

"physical abuse" means any act of assault;

"prescribed" means prescribed by the Regulations made pursuant to the provisions of this Act;

"protection order" means an order made pursuant to section 6; and a final Protection Order issued pursuant to section 13;

"respondent" means a person who is or has been in a domestic relationship with the applicant and against whom the applicant has obtained or is endeavouring to obtain an order pursuant to section 6 or section 13;

"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;

"stalking" includes the repeatedly following, pursuing or accosting of the applicant;

"victim" means any person whom alleges to have been subjected to an act of domestic violence;

### **3. Duty to inform victim and applicant of rights**

(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 manner as stated in Schedule I; and
- (b) hand a printed copy of the information relating to the right of the victim pursuant to paragraph (a) as soon as possible thereafter .

#### **4. Arrest by police officer without warrant**

Subject to section 21, a police officer may arrest a person at the scene of an incident of domestic violence, without a warrant, whom he or she reasonably suspects of having committed an offence containing an element of violence.

## **PART II**

### **PROTECTION ORDERS**

#### **5. Application for protection order**

(1) An applicant may apply to the Court for an Interim Protection Order pursuant to section 6 in accordance with Form I in Schedule II, on the ground that the respondent has engaged in domestic violence.

(2) The Clerk shall inform the applicant that they may seek assistance from the Directorate of Gender Affairs.

(3) The application referred to in subsection (1) shall be made by way of an affidavit in which shall be stated-

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

(4) Notwithstanding the provisions of any other law, 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, a social worker or advocate, save and except that the application shall be brought with the consent of the applicant, except in circumstances where the applicant is-

- (a) a child;
- (b) physically or mentally incapacitated by unsoundness of mind or a disability;
- (c) unconscious; or
- (d) under the influence of intoxicating liquor or drugs.
- (e) uncooperative but there exists credible information on which the case may be pursued

(5) Pursuant to subsection (4) (a) a child may apply for a protection order through-

- (a) a person with whom the child normally resides or resides with on a regular basis or any adult member of his or her household; or

(b) a parent or guardian or a person who is in loco parentis to the child.

(6) 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.

(7) The application made pursuant to subsection (1) may be accompanied by supporting affidavits of persons who have 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 Clerk of the Court who shall forthwith submit the application and the affidavits to the Court.

(10) In considering the 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).

## **6. Power of Court to grant Interim Protection Order**

(1) The Court may make an Interim Protection Order on an ex parte basis, pending the hearing and determination of the proceedings, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant.

(2) Where 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 grant an Interim Protection Order against the respondent, in accordance with Form II in Schedule II.

(3) In exercising his or her powers pursuant to the provisions of this section, the Court shall not refuse to grant 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 granted pursuant to subsection (1) shall 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) shall not be less than ten days after service has been effected upon the respondent pursuant to provisions of section 11.

(6) An Interim Protection Order may be made for such period of time as the Court considers necessary but shall not exceed thirty days.

(7) An Interim Protection Order is automatically extended for a period of fifteen days where the Court is unable to hear and determine the proceedings before the expiry of the period in subsection (6).

## **7. Terms of Protection Order**

(1) In granting an Interim Protection Order pursuant to section 6 or a final Protection Order pursuant to section 13, the Court 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;
- (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) entering the place of schooling or care of any child;
- (h) preventing the applicant or any child who ordinarily lives or lived in the shared household from entering or remaining in the shared household or a specified part of the shared household;
- (i) 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;
- (j) approaching the applicant within a specified distance; or
- (k) 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 order be applied for the benefit of a child;
- (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 the child or children, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to the provisions of 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) applicant or both, receive professional counselling or therapy from a person or an agency or from a programme which is approved by the Department responsible for Social Services.

(3) Notwithstanding the foregoing, the Court may impose any additional conditions which it deems reasonably necessary to provide and protect the safety of the applicant, a child or children, including but not limited to an order that a police officer shall accompany the respondent 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 Interim Protection Order or a final Protection Order apply for the benefit of a child.

(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) Subject to section 25, the Court shall not refuse to grant an Interim Protection Order or a final Protection Order on the basis that a single act has been committed or a single threat has been made by the respondent, or on the basis that 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 inter alia directs counselling, the Order shall 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, such report to include a prognosis for recovery.

(8) Where the Court makes an Order which inter alia,-

- (a) directs that the respondent vacate any shared household; or
- (b) directs the respondent to return to the applicant any specified property that is in his or her possession or control,

the Court may, in the same Order, if it is in the opinion of the Court necessary, and notwithstanding any other law, 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.

### **8. Matters to be considered by Court**

In determining whether or not to impose one or more of the prohibitions 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 or children;
- (d) the accommodation needs of the applicant and any other person;
- (e) the hardship that may be caused 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) any other matter, that in the circumstances of the case, which the Court considers relevant.

### **9. Undertaking from respondent**

(1) In any proceedings pursuant to the provisions of this Act, the Court may at any time before the taking of evidence, accept an undertaking from the respondent given on oath, that the respondent shall not engage in conduct specified in the application or any other conduct that constituted domestic violence.

(2) Where an undertaking is given pursuant to subsection (1) the Court shall make an Interim Protection Order or a final Protection Order, as it deems fit, in respect of the undertaking.

(3) An undertaking may deal with all matters that may be dealt with under an Interim Protection Order or a final Protection Order as the Court sees fit, having regard to the matters referred to in section 8.

(4) An undertaking shall remain in force for the period stated in the undertaking, but shall not exceed three years.

(5) Sections 14, 15, 16, Part IV and Part V shall apply in relation to an undertaking as they do to an Interim Protection Order or a final Protection Order.

### **10. Seizure of firearm and dangerous weapons**

(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, including him or herself, by means of the said firearm or dangerous weapon; or
- (b) possession of the said 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 of intoxicating liquor or drugs.

(2) The Court shall direct the Clerk to refer a copy of the affidavit made pursuant to section 5 (3) to the Commissioner of Police, if the Court had ordered the seizure of any firearm pursuant to the provisions of this Act.

### **11. Service of notice of proceedings**

(1) Upon an application made for an Interim Protection Order pursuant to section 5 and the granting of such 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 should not be confirmed, shall be served personally on the respondent.

(2) A notice of the proceedings pursuant to subsection (1) shall be issued in accordance with Form III in Schedule II.

(3) Where an application is filed in respect of a child, 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 with whom the child normally resides or resides with on a regular basis.

(4) A notice of proceedings which is issued and served pursuant to this section shall be deemed to be a summons that is duly served pursuant to the rules of the Court's made pursuant to section 33 and shall compel the respondent to appear in Court to answer to the application.

(5) A notice of proceedings issued pursuant to the provisions of this Act may be served on the applicant or his or her agent and the Court shall receive proof of service by affidavit in accordance 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.

### **12. Validity of Interim Protection Order**

(1) The Interim Protection Order issued pursuant to section 6 shall have no effect until it has been served on the respondent in the manner provided for in section 11.

(2) A copy of the affidavit made pursuant section 5 and the record of any oral evidence noted pursuant to section 5 (10) (b), shall be served on the respondent with the Interim Protection Order.

(3) Upon service or upon receipt of a return of service, the Clerk shall forthwith serve a certified copy of the Interim Protection Order and the original warrant of arrest contemplated pursuant to section 23 to the applicant.

### **13. Power to grant Final Protection Order**

(1) If the respondent does not appear on the return date as stated pursuant to section 6(4), the Court shall proceed to hear and determine the matter and the Interim Protection Order shall be confirmed if the Court is satisfied that proper service has been effected upon the respondent, and, a Final Protection Order shall be issued in accordance with Form V in Schedule II.

(2) If the applicant does not appear either in person or represented by an attorney-at-law or advocate, on the return date as stated pursuant to section 11, 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, adjourn the hearing upon such terms as it deems just; or
- (c) where it is satisfied, having regard to the submissions before him or her, that it is appropriate for evidence to be given by affidavit pursuant to this section, the Court may so direct, but the Court shall, on the application of any other party, order the attendance of 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 confirmed, the matter shall be adjourned to enable the Clerk to notify the applicant of the date of the hearing.

(4) The respondent shall, not less than ten days before the date of hearing, file with the Clerk supporting affidavits showing cause as to why the Interim Protection Order should not be confirmed.

(5) A copy of the affidavits of the respondent shall forthwith be served on the applicant.

(6) The applicant, upon receipt of the affidavits may, before the date of the hearing, file a replying affidavit together with any supporting affidavits with the Clerk in which shall be stated the reasons why the Interim Protection Order shall be confirmed.

(7) A copy of the replying affidavit of the applicant shall forthwith be served on the respondent.

(8) On the date of the hearing, the Clerk submit to the Court the -

- (a) application for the Interim 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.

(9) 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.



(10) At the conclusion of the hearing pursuant to subsection (9) (a) or (b), the Court-

- (a) may confirm, amend, or set aside the Interim Protection Order; and
- (b) shall issue an order in accordance with Form V in Schedule II.

(11) The Clerk shall forthwith notify the parties of the result and shall pursuant to the provisions of this Act-

- (a) serve the original final Protection Order referred to in subsection (10) on the respondent;
- (b) serve a certified copy of the final Protection Order referred to in subsection (10) on the applicant.

(12) A Final Protection Order shall be for such period as the Court considers necessary but shall not exceed three years.

(13) 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.

#### **14. Explanation of orders**

(1) 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.

#### **15. Service of orders**

Where an Interim Protection Order or a Final Protection Order is made or varied by the Court -

- (a) the Clerk shall arrange for the order to be drawn up in accordance with 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.

#### **16. Service other than personal service**

(1) Where the Court has not be able to serve notice of proceedings pursuant to section 11 or an Interim Protection Order or a Final Protection Order, upon the respondent personally, he or she

may make an order for substituted service of the notice of the proceedings or order, as the case may be.

- (2) For the purpose of subsection (1), “substituted service” means-
  - (a) [registered post to the last known address of the respondent;
  - (b) leaving the document at the last known address of the respondent;]; or
  - (c) service in such manner as the Court may direct.

### **PART III**

#### **VARIATION AND REVOCATION OF INTERIM PROTECTION ORDER AND FINAL PROTECTION ORDER**

##### **17. Variation and revocation of orders**

(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 accordance with Form VI in Schedule II, for an order varying or revoking the original interim protection Order or Final Protection Order.

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

(3) A copy of an application made pursuant to this section shall be served on each person who is a party to the proceedings in respect of which the original interim protection order or final protection order was made.

(4) The Court shall have regard to the matters specified in section 8, in determining whether to vary or revoke an order in accordance with Form VII in Schedule II.

### **PART IV**

#### **ENFORCEMENT OF ORDERS**

##### **18. Breach of orders**

- (1) Subject to subsection (2), a person against whom an order has been made and who-
  - (a) has had notice of the order; and
  - (b) contravenes any provision of the order or fails to comply with any direction of the Court,

commits an offence and is liable-

- (i) on a first conviction to a fine not exceeding nine thousand dollars or to a term of imprisonment not exceeding three months;
- (ii) on a second conviction, to a fine not exceeding fifteen thousand dollars or to a term of imprisonment not exceeding one year or both;
- (iii) on any subsequent conviction, to a period of imprisonment not exceeding five years.

(2) 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 conviction to a fine not exceeding ten thousand dollars.

## **PART V**

### **POLICE POWERS OF ENTRY AND ARREST**

#### **19. Duties of police officers**

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

(3) A domestic violence report shall be in accordance with Form VIII in Schedule II shall 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.

#### **20. Issue of warrant**

(1) Where the Court 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 Court 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.

### **21. Police powers of arrest without warrant**

(1) For the avoidance of doubt, a police officer may act in accordance with the provisions of the Criminal Procedure Act, 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) Nothing in this section authorises 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 division where the incident occurred, and the report shall contain the following information-

- (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.

### **22. Duty of police officer to assist victims**

Where a police officer has entered on to the premises pursuant to section 4, section 20 and 21 (1) the police officer shall-

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

### **23. Warrant of arrest and procedure upon arrest of respondent where Court issues Interim Protection Order**

(1) In granting an Interim Protection Order pursuant to section 6, the Court may make an Order-

- (a) authorising the issue of a warrant for the arrest of the respondent, in accordance with Form IX in Schedule II; and

- (b) suspend the execution of such warrant, subject to compliance with any prohibition, condition, obligation or order imposed pursuant to section 7.

(2) The warrant referred to in subsection (1) shall remain in force unless 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 accordance with 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 described as Form X as specified 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 Clerk shall issue 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 the provisions of this Act the provisions of the Criminal Procedure Act relating to the-

- (a) manner of execution of warrants of arrest;
- (b) arrest;
- (c) detention, search, release from custody; and
- (d) 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-
  - (i) unless the 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 contemplated pursuant to section 37; and
  - (ii) any other offence resulting from a complaint lodged by the applicant against the respondent.

#### **24.Powers of arrest where a Final Protection Order is in force**

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 detain and arrest the respondent without a warrant.

#### **25.Existing criminal law to apply**

(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;
- (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 where 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, 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 relationship.

## **PART VI**

### **GENERAL**

#### **26. Conduct of proceedings**

(1) No other person shall be present during the hearing of any proceedings pursuant to the provisions of this Act except-

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

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

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

(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 normally resides with on a regular basis shall be entitled to be a party to the proceedings.

(5) Nothing in this section shall prevent a child or children, 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.

#### **27. Evidence**

In any proceedings pursuant to the provisions of 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.

#### **28. Standard of proof**

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

### **29. Restriction of publication of reports**

(1) Subject to subsection (4), a person shall not publish any report of proceedings pursuant to the provisions of 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) Nothing in this section limits-

- (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.

### **30. Orders by consent**

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

### **31. Appeals**

(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 High Court.

(2) Except where the Court who 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 no appeal pursuant to this section were pending.

### **32. Protection of mortgage**

(1) The rights conferred on any person in respect of any property by an order made pursuant to the provisions of this Act shall be subject to the rights of any person entitled to the benefit of the mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the order was registered or if 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) Notwithstanding anything in any enactment or in any other instrument, no money payable under any mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of the order pursuant to the provisions of this Act.

### **33. Rules of the Court**

The Chief Justice may make rules regulating the practice and procedure of the Court with respect to proceedings under this Act, providing for such matters as are necessary for giving full effect to the provisions of this Act and for its due administration.

### **34. Property rights**

Nothing in this Act shall be construed as altering the rights of a spouse to ownership of property.

### **35. Obligation to report ill-treatment of children**

(1) Notwithstanding the provisions of any other law, every 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 such child has been subject to acts of domestic violence as a result of which such child suffers from injury, whether single or multiple, shall immediately notify a police officer and or the Department responsible for Social Services 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.

## **PART VII**

### **PROVISIONS RELATING TO BAIL**

#### **36. Bail**

(1) Notwithstanding any provisions in any law relating to bail, where the Court is required to determine whether to grant bail in respect of an offence committed pursuant to the provisions of this Act, the Court shall consider-

- (a) the need to protect the applicant from domestic violence;
- (b) the welfare of a child where the respondent or the applicant has custody of that child;
- (c) the welfare of any child 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) Notwithstanding any provisions in any law relating to bail, the Court in granting bail, may order that the recognisance be subject to such 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 granted 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.

## **PART VIII**

### **OFFENCES AND PENALTIES**

#### **37. Offences**

Notwithstanding the provisions of any other law, any person who assists a person to contravene any prohibition, condition or obligation or order imposed pursuant to section 7 commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three years or to both such fine and imprisonment.

## **PART IX**

### **REGULATIONS**

#### **38. Regulations**

The Minister may make regulations to give effect to the provisions of this Act.

## **PART X**

### **REPEALS AND TRANSITIONALS**

#### **39. Repeal**

The Domestic Violence (Summary Proceedings) Act 1999 is repealed.

#### **40. Definitions for Part X**

In this part—

“commencement” means the commencement of the provision in which the term appears.

“repealed Act” means the Domestic Violence (Summary Proceedings) Act 1999.

#### **41. Domestic violence order to continue to have effect**

(1) This section applies to a domestic violence order made or varied under the repealed Act that was in force immediately before the commencement of this Act.

(2) The domestic violence order is taken to have been made or varied under this Act.

(3) A condition of the domestic violence order is taken to be a condition imposed under Part 2 of this Act.

(4) If an adult was named in the domestic violence order under section 4 of the repealed Act, the adult is taken to be a person named in the order under Part 2 of this Act.

(5) If a child was named in the domestic violence order under section 4 of the repealed Act, the child is taken to be a person named in the order under Part 2 of this Act.

(6) A reference in section 18 of this Act includes an offence under section 5 of the repealed Act.

#### **42. Application for protection order**

(1) This section applies to an application for a protection order under the repealed Act if, on the commencement, the application had not been finally dealt with.

(2) The application is taken to have been made under section 5 of this Act.

#### **43. Domestic violence committed before commencement**

A court may make an order under a provision of this Act in relation to domestic violence committed before the commencement of the provision.

#### **44. Application for variation of domestic violence order**

(1) This section applies to an application for the variation of a domestic violence order under section 10 of the repealed Act, if, on the commencement, the application had not been finally dealt with.

(2) The application is taken to be an application under section 17 of this Act.

**45. Application for revocation of domestic violence order**

(1) This section applies to an application for the revocation of a domestic violence order under [section X] of the repealed Act if, on the commencement, the application had not been finally dealt with.

(2) The application is taken to be an application, under section 17 of this Act, for a variation of the order by stating an earlier date on which the order ends.

**46. Service and other things done in relation to continued applications**

(1) This section applies to an application under the repealed Act that, under this part, is taken to be an application made under this Act.

(2) The service of a copy of the application, or another thing done in relation to the application, before the commencement is taken to have been done under this Act.

**47. Appeal**

(1) This section applies to an appeal against an order or a decision under section 24 of the repealed Act if, on the commencement, the appeal had not been finally dealt with.

(2) The appeal is taken to be an appeal under section 31 of this Act.

**48. Restriction on publication of proceedings**

A reference in section 29 to a proceeding under this Act includes a proceeding under the repealed Act.

**49. Restriction on obtaining copies of documents**

A reference in section 29 to a proceeding under this Act includes a proceeding under the repealed Act.

**50. References to repealed Act**

If the context permits, a reference in another Act or document to the repealed Act may be taken to be a reference to this Act.

## **SCHEDULE I**

### **Section 3**

#### **INFORMATION TO BE RELATED BY POLICE OFFICER**

##### **TO VICTIM AND APPLICANT OF RIGHTS**

“You have the right to request the assistance of a police officer in order to protect yourself and your children, you may apply to the Court for a protection order, and I am obliged to provide you with information on how to obtain a protection order. You may also request my assistance or that of another police officer 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. If you or your children are in need of medical treatment, you have the right to request that I or another police officer assist you in obtaining such medical treatment.

A protection order can be obtained from the Court at any time of the day or night and will be served on the abuser free of charge. You may request that your address not be disclosed to your abuser. The abuser can be ordered to pay emergency monetary relief and any or all contact with you or your children may be prohibited. You may also request the Court to convict the 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. If you and your children require any counselling or support, you should contact the Department of Social Services who can offer services to you and your children. You also have the right to lodge a criminal complaint against your 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.

Should you obtain a protection order, or lodge a criminal complaint, in which false facts or lies are knowingly alleged, you may be convicted of an offence. If you do not understand any of the above information, you may ask for more information or ask to speak with another officer with whom you may be more comfortable”.

**SCHEDULE II**

**FORM I**

**SECTION 5**

**APPLICATION FOR PROTECTION ORDER**

1. (a) I \_\_\_\_\_ (full names) -  
Date of Birth \_\_\_\_\_ with the following particulars  
Residential Address \_\_\_\_\_

\_\_\_\_\_  
Telephone No. \_\_\_\_\_

Occupation \_\_\_\_\_

Nature of domestic relationship with Respondent \_\_\_\_\_

(hereinafter referred to as the Applicant)

(b) I \_\_\_\_\_ (full names) -  
Date of Birth \_\_\_\_\_ with the following particulars  
Residential Address \_\_\_\_\_

\_\_\_\_\_  
Telephone No. \_\_\_\_\_

Business Address \_\_\_\_\_

\_\_\_\_\_  
Telephone No. \_\_\_\_\_

On behalf of \_\_\_\_\_ (full names)  
(hereinafter referred to as the Applicant)

Date of Birth \_\_\_\_\_ with the following particulars

Residential Address \_\_\_\_\_

\_\_\_\_\_

Telephone No. \_\_\_\_\_

Business Address \_\_\_\_\_

Occupation \_\_\_\_\_

Nature of domestic relationship with 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);

2. HEREBY APPLY FOR A PROTECTION ORDER AGAINST -

\_\_\_\_\_ (full names)

Date of Birth \_\_\_\_\_ with the following particulars

Residential Address \_\_\_\_\_

\_\_\_\_\_

Telephone 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 or enlist the help of another person to commit any act of domestic violence;
  - (b) Not to enter the shared household;
  - (c) Not to enter the Applicant's residence;
  - (d) Not to enter the Applicant's place of employment
  - (e) Not to enter the place of schooling or care of named child or children;
  - (f) Not to prevent the Applicant or any child who ordinarily lives or lived 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).

6. 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 \_\_\_\_\_ Police Station.

8. Additional conditions requested as 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 \_\_\_\_\_

(b) 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[ ]

\_\_\_\_\_

Court

**FORM II**

**Section 6(2)**

**INTERIM PROTECTION ORDER**

IN THE COURT COURT \_\_\_\_\_

HELD AT \_\_\_\_\_ APPLICATION NO \_\_\_\_\_

In the matter between:

APPLICANT \_\_\_\_\_

Date of Birth \_\_\_\_\_

AND

RESPONDENT \_\_\_\_\_

Date of Birth \_\_\_\_\_

1. Respondent's particulars \_\_\_\_\_

Residential Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (Tel. No.) \_\_\_\_\_

Occupation \_\_\_\_\_

2. Whereas the Applicant (or \_\_\_\_\_ on behalf of the Applicant), has applied for an Interim 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 Interim 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 who ordinarily lives or lived in the shared household at

\_\_\_\_\_

3.2.9 To make rent or mortgage payments in the sum of \_\_\_\_\_ per month;

3. 2. 10 To pay the sum of \_\_\_\_\_ to the applicant as educational expense.

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; i.e.

\_\_\_\_\_

4.2 A member of the police force at \_\_\_\_\_ seizes the following arm or dangerous weapon in the possession of the Respondent i.e.

\_\_\_\_\_

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 i.e.

\_\_\_\_\_  
\_\_\_\_\_

4.5 The Respondent is allowed contact with the following children i.e.

\_\_\_\_\_  
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 before the Court 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.

\_\_\_\_\_  
Court  
\_\_\_\_\_

\_\_\_\_\_  
Date

**FORM III**

**Section 11(2)**

**NOTICE OF PROCEEDINGS**

**NOTICE OF PROCEEDINGS**

ANTIGUA AND BARBUDA

In the District of \_\_\_\_\_

BETWEEN

\_\_\_\_\_

Applicant

And

\_\_\_\_\_ Respondent

TO THE RESPONDENT

An application pursuant to section 11 of the Domestic Violence Act 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 the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ a.m/pm 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.

\_\_\_\_\_

Clerk of Court

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**FORM IV**

**Section 11(5)**

**AFFIDAVIT**

ANTIGUA AND BARBUDA

No. \_\_\_\_\_

Return of service of process in respect of Domestic Violence Offence(s) for the the 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 \_\_\_\_\_

---

Clerk of Court



**FORM V**

**Section 13(1), 13(10)**

**FINAL PROTECTION ORDER**

IN THE FAMILY COURT OF \_\_\_\_\_

HELD AT \_\_\_\_\_ APPLICATION NO \_\_\_\_\_

In the matter between:

APPLICANT: \_\_\_\_\_

Date of Birth \_\_\_\_\_

AND\

RESPONDENT: \_\_\_\_\_

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[     ]

---

Court

Date

**FORM VI**

**Section 15(a), 17(1)**

**APPLICATION FOR VARIATION OR REVOCATION OF INTERIM PROTECTION ORDER OR PROTECTION ORDER**

ANTIGUA AND BARBUDA

In the District of \_\_\_\_\_

BETWEEN

\_\_\_\_\_ APPLICANT

AND\

\_\_\_\_\_ RESPONDENT

I \_\_\_\_\_ hereby 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 revocation/variation of the order in the following :

Specify details of variation

\_\_\_\_\_  
Applicant

Dated this \_\_\_\_\_ day of

**FORM VII**

**Section 17(4)**

**ORDER VARYING INTERIM PROTECTION ORDER OR FINAL PROTECTION ORDER**

ANTIGUA AND BARBUDA

In the District of \_\_\_\_\_

The Court having heard an application made pursuant to section 17 of the Act by (name of the applicant) in respect of conduct or threatened conduct of (name of respondent) and the Court having on the \_\_\_\_\_ day 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 protection order or the protection order be either:

1. REVOKED

. Specify effective date of revocation )

2. VARIED AS FOLLOWS

Specify details of variation

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Clerk of Court

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**FORM VIII**

**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 injury \_\_\_\_\_

Medical report from attached Yes No

Instrument used to inflict injury \_\_\_\_\_

Whereabouts of children at time of incident \_\_\_\_\_

State whether previous complaints were made Yes No

Date \_\_\_\_\_ Time \_\_\_\_\_ Diary Reference \_\_\_\_\_

Investigator : \_\_\_\_\_

(Number/Rank/Number)

Action taken \_\_\_\_\_

Is protection order in existence? 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**

**Section 23(1)(a)**

**WARRANT OF ARREST**

IN THE FAMILY COURT OF

HELD AT APPLICATION NO. \_\_\_\_\_

In the matter between:

APPLICANT \_\_\_\_\_

Date of Birth

RESPONDENT \_\_\_\_\_

\*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 may 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[ ]

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Court \_\_\_\_\_  
Date

**FORM X**

**Section 23(3)(b)**

**BREACH OF PROTECTION ORDER**

IN THE COURT OF

HELD AT APPLICATION NO. \_\_\_\_\_

I \_\_\_\_\_

Full / Names , Date of Birth)

Residential Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

Business Address \_\_\_\_\_

Telephone 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 against

\_\_\_\_\_

(Full names)

Residential Address: \_\_\_\_\_

Telephone No \_\_\_\_\_

Business address: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Occupation: \_\_\_\_\_

(Hereinafter referred to as the Respondent)

2. A copy of the of the Protection Order (indicating what orders were made), and the original Warrant of Arrest is attached.0

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 that the following questions and noted \*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 understand 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 this \_\_\_\_\_ day of \_\_\_\_\_ 20

\_\_\_\_\_

Court

Made this \_\_\_\_\_ day of \_\_\_\_\_ 2013

## **EXPLANATORY MEMORANDUM**

The objects of this Bill is stated in its preamble 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 the individual and 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 social, economic, cultural, ethnic and religious backgrounds and that children together with other members of the family suffer deep and lasting emotional effects from domestic violence, even when themselves not assaulted, this Bill is seen as an absolute necessity in Antigua and Barbuda where acts of domestic violence are on the rise.

The Bill recognizes that domestic violence is a serious crime against society and that women form the majority of victims of domestic violence. Domestic violence is an obstacle to achieving gender equality.

Part I of the Bill provides the preliminary provisions and contains clauses 1 to 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 2 and provides the following-

“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 cohabit or cohabited with each other in a relationship of some permanence;
- (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 which includes but is not limited to an actual or perceived romantic, intimate or sexual relationship of any duration; or
- (g) the share or shared the same household or residence”.

The term “domestic violence” is defined to mean 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 threat 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, place of work, worship or recreation 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 of his or her rights.

Clause 4 of the Bill provides for the arrest by a police officer without a warrant subject to the provisions of clause 21. The Bill provides that a police officer may without warrant arrest a person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence.

Part II of the Bill provides for Protection orders and contains clauses 5-16.

Clause 5 makes provision for the application for a protection order. The Bill notes that a victim of domestic violence is a disempowered person and in light of this, an application for a protection order may therefore be brought on behalf of the victim by any other person (including a police officer, an approved social worker or advocate) who has a material interest in the well-being of the victim.

Clause 6 of the Bill makes provision for the power of the Court to grant an Interim Protection Order. Since the most dangerous time for any domestic violence victim is separation from the abuser, 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 order is confirmed. By virtue of clause 6 (6) an interim order may be made for such period as the Court considers necessary but shall not exceed thirty days.

Clause 7 makes provisions for the terms of a protection order. It provides that-

“7. (1) In granting an Interim Protection Order pursuant of section 6 or a Final Protection Order pursuant to section 13, the Court 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;

- (d) entering a specified part of the shared household;
  - (e) entering the residence of the applicant;
  - (f) entering the place of employment, place of worship or recreation of the applicant;
  - (g) preventing the applicant or any child who ordinarily lives or lived in the shared household from entering or remaining in the shared house hold 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 or a protection order be applied for the benefit of a child and members of the household;
  - (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 the child, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant o the provisions of 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, mortgage and utilities payment for premises occupied by the applicant having regard to the financial needs and resources of the parties;
    - (vi) or applicant or both, receive professional counselling or therapy by the Department responsible for Social Services”.

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, utilities or mortgage payments, order the respondent to pay emergency monetary relief, or order the respondent to pay educational or medical expenses. Children should not become the contact point through which the respondent can regain control over the applicant. Contact with any child by the respondent may therefore be refused or structured contact with such 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 makes provision for an undertaking which may be given by a respondent subject to the conditions as specified in the clause.

Clause 10 contains provisions regarding seizure of arms and dangerous weapons in domestic violence situations.

Clause 11 makes provision for the service of notice of proceedings.

Clause 12 provides that an Interim Protection Order issued pursuant to clause 5 shall have no effect until it has been served on the respondent in the manner provided in clause 11.

Clause 13 makes provision for the power of the Court to grant a Final Protection Order.

By virtue of clause 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 has the duty to explain to the respondent the nature, terms and consequences of the Order.

Clause 15 makes provision for the service of orders.

Clause 16 makes provision for service other than personal service.

Part III, clause 17 provides for the variation and revocation of an Interim Protection Order or a Final Protection Order.

Part IV, clause 18 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 V, Clauses 19 to 26, provides for police powers of entry and arrest.

Clause 19 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 National Domestic Register to be maintained by the Commissioner of Police.

Clause 20 makes provisions for the issue of a warrant of arrest.

Clause 21 makes provisions for the powers of a police officer to arrest without a warrant.

Clause 22 places a duty of a police officer who has entered the premises pursuant to clause 4, clause 21 and clause 22(1) to assist a victim of domestic violence.

Clause 23 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 24 provides for the powers of arrest where a Final Protection Order is in force.

Clause 25 make provisions for the existing criminal law to apply in relation to offences committed pursuant to the provisions of this Ordinance.

Part VI provides for general provisions and contains clauses 26-35.

Clause 26 makes provision for the conduct of proceedings.

Pursuant to clause 27, in any proceedings pursuant to the provisions of 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 28 provides that the standard of proof save and except in criminal proceedings, shall be decided on a balance of probabilities.

Clause 29 provides for the restriction of publication of reports.

Clause 30 provides for Orders of consent.

Clause 31 makes provisions for appeals.

Clause 32 makes provision for the protection of mortgage.

Clause 33 provides for rules of the Court.

Clause 34 provides for property rights.

Clause 35 places an obligation on a specified group of persons to report ill treatment of children, notwithstanding the provisions of any other law.

Part VII, clause 36 makes provisions for bail.

Part VIII, clause 37 makes provisions for offences and penalties.

Part IX, clause 38 makes provisions for regulations.

Part X, clauses 39 – 50 deals with repeals and transitional provisions.

Note the Divorce Act and Rules saves Matrimonial causes rules, it impacts on appeal.