

CHAPTER 130A

DOMESTIC VIOLENCE (PROTECTION ORDERS)

1992-4

This Act came into operation on 13th February, 1992.

Amended by:

This Act has not been amended

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1993

CHAPTER 130A

DOMESTIC VIOLENCE (PROTECTION ORDERS) 1992-4

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SCHEDULE

**BARBADOS****DOMESTIC VIOLENCE (PROTECTION ORDERS)
1992-4**

An Act to provide for the granting of protection orders in circumstances surrounding domestic violence and for related matters.

[Commencement: 13th February, 1992]

Short title

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

Definitions

2. In this Act,

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

“clerk” means the clerk of the Court;

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

“Court” means the Magistrates Court having jurisdiction to hear the application;

“protection order” means an order made under section 3;

“harassment” includes

- (a) the intimidation of a person by
 - (i) persistent verbal abuse;
 - (ii) threats of physical violence;
 - (iii) the malicious damage of the property of a person; or
 - (iv) any other means;
- (b) the persistent following of a person about from place to place;
- (c) the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof; or
- (d) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be, or the approach to the house or other place;

“spouse” includes a party to a relationship where the parties are living with each other in the same household as husband and wife.

Protection order

3.(1) Where on an application made in accordance with section 4 in respect of a person, the Court is satisfied on the balance of probabilities that a person

- (a) has engaged in or has threatened to engage in conduct that is capable of constituting a criminal offence or an attempt to commit a criminal offence against the spouse, former spouse or child of that person or some other member of the household under any law; or

- (b) has engaged in conduct that may reasonably be regarded as harassment of the spouse, former spouse or child, or other member of the household,

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

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

(3) The Court shall not make an interim protection order under subsection (2), unless the application for such an order is supported by oral evidence on oath or by evidence on affidavit given by the complainant.

(4) Subject to section 16(1) and 18(3), a protection order made by the Court under subsection (1) may be for such period of time as the Court considers necessary, but may, on the application of the complainant or the respondent, be varied or revoked.

Application for protection order

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

- (a) the spouse or former spouse of the person against whom the order is sought where the offence was committed or the harassment conducted against that spouse or a child of the household;
- (b) any other member of the household, not being a spouse or child;
- (c) the Commissioner of Police;

- (d) with the leave of the Court, a person other than a person mentioned in paragraph (a), as agent for a person to whom that paragraph applies; or
 - (e) a Child Care Officer or Welfare Officer on behalf of a child against whom the offence was committed or the harassment conducted.
- (2) The person against whom the order is sought shall be the respondent to the application.
- (3) Where an application for a protection order has been made to the Court under subsection (1), the Court shall issue a copy of the application together with a summons in accordance with Form 2 set out in the *Schedule*, to the respondent forthwith to be served personally on the respondent.
- (4) Where it appears to the Court that it is not reasonably practicable to serve personally on the respondent a copy of an application for a protection order, the Court may
 - (a) order that the copy of the application be served by such other means as the Court thinks just;
 - (b) make an order for substituted service.
- (5) Notwithstanding anything in this Act, any document required to be served under this Act may be served by an attorney-at-law or his agent.
- (6) Where it is proved to the satisfaction of a magistrate on oath that the summons and the copy of the application referred to in subsection (3) or (5) was served on the respondent within what appears to the magistrate to be a reasonable time and the respondent failed to appear at the time and place appointed for the hearing, the magistrate may
 - (a) proceed to hear and determine the matter in the absence of the respondent; or
 - (b) where the Court is satisfied, having regard to the information before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.

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

(8) An application for a protection order shall be heard within 2 days after the date of service of the application or as soon as practicable thereafter.

Affidavit evidence

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

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

Form of orders

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

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

- (d) prohibiting the respondent from causing another person to engage in the conduct referred to in paragraph (a) or (c).
- (4) Notwithstanding section 2, in paragraphs (b), (c) and (d) of subsection (1) “complainant” means a person against whom the offence was committed or who was harassed.
- (5) A protection order shall, in each case, provide that the parties to the order or any child in respect of whom the order was made, attend the Family Services Division of the Welfare Department or such other Agency as the Court specifies, for appropriate professional counselling and therapy.
- (6) Where a protection order has been made in accordance with subsection (5), the Family Services Division of the Welfare Department or any other Agency specified by the Court under subsection (5) shall forward to the Court a report setting out the dates on which counselling took place, the nature of the counselling and therapy carried out and the response given to the counselling and therapy by the parties to the order and any child in respect of whom the order was made not later than 1 month before the expiration of the order or at such time as the Court specifies.

Matters to be taken into account

- 7.(1) In determining an application for a protection order, the Court shall have regard to the following
- (a) the need to ensure that persons are protected from violence and harassment;
 - (b) the welfare of any child who is a member of the respondent’s household;
 - (c) the need to preserve and protect the institution of marriage or a union other than marriage and to give protection and assistance to the family as a natural and fundamental group unit of society;
 - (d) the accommodation needs of the members of the household;

- (e) any hardship that will be caused to the respondent or to any other person as a result of the making of the order; and
 - (f) any other matter that in the circumstances of the case, the Court considers relevant.
- (2) In determining whether to make an order that includes a provision of the kind mentioned in subsection (2) or (3) of section 6, the Court shall also take into account the property, income and financial resources, and the financial obligations, of the complainant and the respondent
- (3) In having regard to the matters referred to in subsections (1) and (2), the Court shall consider the matters referred to in paragraphs (a) and (b) of subsection (1) as being of primary importance.

Notice to respondent

- 8.(1)** Subject to this Act, a protection order shall not be made by the Court unless the respondent has had actual notice in the Form 2 set out in the *Schedule*, of the application for the order.
- (2) Where a protection order or an interim protection order is made or varied by the Court, the clerk shall forthwith
- (a) arrange for an order in the Form 3 or in the Form 4 as the case may be set out in the *Schedule* to be formally drawn up and filed in the Court;
 - (b) cause a copy of the order referred to in paragraph (a) to be served personally on the respondent;
 - (c) cause a copy of the order referred to in paragraph (a) to be forwarded to
 - (i) the Commissioner of Police and to the police officer in charge of the police station that is situated in the jurisdiction of the place of residence of the complainant and respondent; and
 - (ii) any other person who was a party to the proceedings.

Explaining of proposed order to respondent**9.(1)** Where

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

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

(2) The matters referred to in subsection (1) are

- (a) the purpose, terms and effect of the proposed order;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.

Ouster order

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

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

Breach of protection order**11.** Where

- (a) a protection order or an interim protection order is made and the respondent
 - (i) was present at the time the protection order or interim protection order was made, or
 - (ii) was not present at the time the protection order or interim protection order was made, and a copy of the protection order or interim protection order has been served personally on the respondent; and
- (b) the respondent contravenes the order in any respect,

the respondent is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 12 months or to both.

Power of arrest

12.(1) Subject to subsection (2), where the Court makes a protection order the Court may

- (a) where it is satisfied that the respondent has caused actual bodily harm to the complainant or to the child concerned as the case may be;
- (b) where it considers that the respondent is likely to cause actual bodily harm again; and
- (c) where the complainant has applied for a power of arrest to be attached to the protection order either before or at any time during the hearing of the application,

attach a power of arrest to the protection order.

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

(3) Where a power of arrest is attached to a protection order, a member of the Police Force may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of such a provision of the protection order by reason of that person's use of violence or of his entry into any premises or area.

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

(a) he shall be brought before the Court within the period of 24 hours beginning at the time of his arrest, or, as soon as reasonably practicable thereafter, and dealt with in accordance with section 11, and

(b) he shall not be released within that period except on the direction of the Court,

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

Prosecution instituted by summons

13.(1) A person mentioned in section 4(1) may lay an information before a Court in accordance with section 11.

(2) Where a prosecution for an offence under section 11 is instituted by summons, the summons shall require the person to appear to answer the information at a time not later than 72 hours after the time at which the summons is issued.

(3) Service of the summons referred to in subsection (1) shall be effected at least 24 hours before the time appointed in the summons for the hearing of the information.

Power to enter domestic premises

14.(1) A member of the Police Force may, without warrant enter any premises for the purpose of giving assistance to any one present thereon

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

(2) A member of the Police Force referred to in subsection (1), may without warrant, enter premises for the purpose of giving assistance to a person on those premises whom that member has reasonable grounds to suspect is in imminent danger of suffering physical injury or has suffered physical injury at the hands of another person.

Criminal proceedings

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

Duration of order

16.(1) A protection order remains in force for such period, not exceeding 12 months, as the Court specifies in the order.

(2) Where a protection order contains a prohibition or condition of the kind specified in section 6, the Court may specify different periods, being periods none of which exceeds the period specified pursuant to subsection (1), as the period for which each prohibition or condition is to remain in force.

- (3) Subject to this section, an interim protection order remains in force for such period, not exceeding 10 days, as the Court specifies in the order.
- (4) Where
- (a) the Court adjourns the hearing of an application for a protection order; and
 - (b) an interim order is in force in respect of the respondent,
- the Court may, by order, extend the period for which an interim order is to remain in force until the date fixed for the further hearing of the application.
- (5) An interim protection order made on an application under section 3, ceases to be in force
- (a) where a protection order is made on that application and the respondent is present at the time the protection order is made, when the protection order is made;
 - (b) where a protection order is made on that application but the respondent is not present at the time the protection order is made, when the protection order is served on the respondent; or
 - (c) when the application is dismissed.

Variation and revocation of orders

- 17.(1)** Where a protection order or an interim protection order is in force, a party to the proceedings in which the order was made may apply to the Court in accordance with Form 4 set out in the *Schedule* for an order varying or revoking the order set out in the *Schedule*.
- (2) On an application under subsection (1), the Court may by order, vary or revoke the protection order or the interim protection order as the case may be.
- (3) The clerk shall cause a copy of an application under this section to be served personally on each person other than the applicant, who was a party to the proceedings in which the original order was made.

(4) In determining whether to vary or revoke a protection order under subsection (2), the Court shall have regard to the matters specified in section 7 and to any report made pursuant to subsection (6) of section 6 in relation to the parties.

Jurisdiction

18.(1) Nothing in this Act shall be construed as affecting any jurisdiction which the High Court may have in respect of the matters referred to under this Act.

(2) Where a spouse has made an application for similar relief under section 91 of the *Family Law Act*, Cap. 214, no application shall be made for a protection order under this Act.

(3) Where a protection order is in force in respect of a person who files an application for similar relief under section 91 of the *Family Law Act*, Cap. 214 that order shall remain in force until expiry and shall not be varied by the Court before expiry.

Restriction on publication

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

Evidence

20. Notwithstanding any other law to the contrary, in any hearing of an application for a protection order made by a Child Care Officer or Welfare Officer under paragraph (d) of section 4(1) in respect of a child, the spouse of the person against whom the order is sought is a compellable witness.

Bail

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

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

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

(3) Where

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

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

Appeal

22.(1) Subject to subsection (3), an appeal against an order made by the Court under this Act shall lie in the same manner as if it had been made under section 131 of the *Magistrates Jurisdiction and Procedure Act*, Cap. 116.

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

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

Ownership of property

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

SCHEDULE

Form 1

(Section 4)

IN THE MAGISTRATE’S COURT FOR DISTRICT
Domestic Violence (Protection Orders) Act, Cap. 130A
APPLICATION FOR PROTECTION ORDER

Between

A. B. of Complainant

and

C. D. of Respondent

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

Complainant

Taken and sworn before me this day of

(Signature)

Magistrate for District

Form 2

(Sections 4(3), 4(7) and 8(1))

IN THE MAGISTRATE'S COURT FOR DISTRICT
 Domestic Violence (Protection Orders) Act, Cap. 130A

NOTICE OF PROCEEDINGS AND SUMMONS

No. 19

Between

A.B. of Complainant
 and

C.D. of Respondent

To the Respondent:

An application under section 4 of the *Domestic Violence (Protection Orders) Act, Cap. 130A* for a protection order has been made by
 against you. A copy of the application is attached. The application has been set
 down for hearing on 19 at
 (time) at

You are hereby summoned to appear at the abovementioned Court on the
 day of at the hours of in the
 noon to answer the complainant.

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

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

Dated 19 .

(Signature)

Clerk of the Magistrates Court

Form 3

(Section 8(2))

IN THE MAGISTRATES' S COURT FOR DISTRICT
Domestic Violence (Protection Orders) Act, Cap. 130A
PROTECTION ORDER or INTERIM PROTECTION ORDER

No. _____ of 19 _____

Between

A.B. of _____ Complainant

and

C.D. of _____ Respondent

The Court, having heard an application made by [name of complainant] under the *Domestic Violence (Protection Orders) Act, Cap. 130A* in respect of the conduct [or threatened conduct] of [name of respondent] towards [name of person to be protected]:

Now the Court this day orders that, for [period]

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

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

Dated _____ 19 _____ .

(Signature)

Clerk of the Magistrates Court

[specify details of variation]

Dated

19 .

(Signature)

Clerk of the Magistrates Court

FORM 5

IN THE MAGISTRATE’S COURT FOR DISTRICT

Domestic Violence (Protection Orders) Act, Cap. 130A

NOTICE TO EMPLOYER/LANDLORD/MORTGAGEE

You are hereby notified that a protection order has been made under the abovenamed Act against..... of....., your employee/tenant/mortgator.

Your attention is drawn to section 10 (1) of the said Act which is set out below.

Domestic Violence (Protection Orders) Act, Cap. 130A

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

(Signature)

Clerk of the Magistrates Court.