



MONTSERRAT

CHAPTER 5.05

FAMILY (PROTECTION AGAINST DOMESTIC VIOLENCE) ACT

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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DOMESTIC VIOLENCE) ACT**

Act 9 of 1998 .. in force 24 November 1998

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FAMILY (PROTECTION AGAINST DOMESTIC VIOLENCE) ACT

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CHAPTER 5.05

FAMILY (PROTECTION AGAINST DOMESTIC VIOLENCE) ACT

(Act 9 of 1998)

AN ACT TO PROVIDE PROTECTION IN CASES INVOLVING DOMESTIC
VIOLENCE AND FOR MATTERS CONNECTED THEREWITH.

Commencement

[24 November 1998]

Short title

1. This Act may be cited as the Family (Protection against Domestic
Violence) Act.

Interpretation

2. In this Act—

“**applicant**” means any person who applies or on whose behalf application
is made, pursuant to this Act, for an order;

“**child**” means—

- (a) a child of both parties to a marriage;
- (b) a child (whether or not a child of either party to a marriage)
who is or has been living in the household residence as a
member of the family;
- (c) a child of a man and a woman who, although not married to
each other are or have lived together in the same household;
- (d) a child (whether or not a child of the man and woman
referred to in paragraph (c) or either of them)—
 - (i) who is or has been a member of their household; or
 - (ii) who resides in that household on a regular basis; or
 - (iii) of whom either the man or woman is a guardian;
- (e) a child who resides in a household on a regular basis,
irrespective of whether there exists some relationship
between the child and another occupant of that household or
between other occupants of that household;

“**court**” means a court of summary jurisdiction;

“de facto spouse” means a person living with a person of the opposite sex as husband and wife though not legally married to each other;

“dependant”, in relation to a person, includes—

- (a) a person over the age of eighteen years; and
- (b) who normally resides or resides on a regular basis with the first-mentioned person;

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

“household residence” means—

- (a) in relation to both spouses, the dwelling house that is used [habitually] by both parties or either of them as the only or principal family residence together with any land, buildings or improvements appurtenant thereto and wholly or mainly used for the purposes of the household;
- (b) in relation to a man or woman who are no longer spouses, the dwelling house that was last used habitually by either of them, before or after they ceased to be spouses, as the only or principal family residence, together with any land, buildings, or improvements appurtenant thereto and used wholly or mainly for the purposes of the household;

“Minister” means Minister responsible for the subject of Community Services;

“occupation order” means an order made under section 7 and includes an interim order made under that section;

“parent” means—

- (a) the parent or grandparent of a spouse;
- (b) the parent or grandparent of a respondent, either by consanguinity or affinity;

“prescribed person” means the spouse of the respondent, a parent or a child or dependant of that person;

“spouse” includes a former spouse, de facto spouse and former de facto spouse;

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

“respondent” means a person against whom an order is granted pursuant to this Act;

“tenancy order” means an order made under section 11 and includes an interim order made under that section;

“tenant”, in relation to a dwelling house, includes a person—

- (a) whose tenancy has expired or has been determined; and

(b) who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwelling house,

and “**tenancy**” shall be construed accordingly.

Persons entitled to apply under this Act

3. (1) An application for an order other than a tenancy order under this Act may be made by—

- (a) the spouse of the respondent being the spouse against whom the alleged conduct has been directed, or is likely to be directed by the respondent;
- (b) a community service officer;
- (c) a police officer;
- (d) a person experienced or qualified in social work, approved by the Minister in writing for the purpose of making the application.

(2) If the alleged conduct involves a child or dependant an application for an order other than a tenancy order may, in addition to the persons specified in subsection (1) may be made by—

- (i) a person with whom the child or dependant normally resides or resides on a regular basis; or
- (ii) a parent or guardian of the child or dependant; or
- (iii) where the dependant is not mentally disabled, the dependant.

(3) An application for a tenancy order may be made by the respondent’s spouse as mentioned in subsection (1)(a) or a parent or guardian of a child or a dependant.

Application for protection order

4. (1) An application may be made to the court in accordance with this Act for a protection order prohibiting the respondent—

- (a) from entering or remaining in the household resident of any prescribed person;
- (b) from entering or remaining in any area specified in the order, being an area in which the household residence of a prescribed person is located;
- (c) from entering the place of work or education of any prescribed person;
- (d) from entering or remaining in any place where a prescribed person happens to be and;

- (e) from molesting a prescribed person by—
- (i) watching or besetting the prescribed person's household residence, place of work or education;
 - (ii) following or waylaying the prescribed person in any place;
 - (iii) making persistent telephone calls to a prescribed person; or
 - (iv) using abusive language to or behaving towards a prescribed person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the prescribed person.

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

- (a) the respondent has used or threatened to use, violence against, or cause physical or mental injury to a prescribed person and is likely to do so again; or
- (b) having regard to all the circumstances, the order is necessary for the protection of a prescribed person, and the court may, if it thinks fit, attach a power of arrest to the order.

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

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

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

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

Breach of protection order

5. (1) Where a protection order or an interim protection order is made and—

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

the respondent commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or both.

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

(3) No person shall be arrested under this section unless the constable believes that the arrest of that person is reasonably necessary for the protection of the persons for whose protection the order was made.

(4) For the purposes of subsection (2), the constable shall take into account—

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

(5) Where an arrest is made under this section the person arrested shall be entitled to make a telephone call to one person of his choice, other than the applicant or a prescribed person, and it shall be the duty of the constable who makes the arrest to ensure that the person arrested is informed, as soon as practicable after the arrest, of the right conferred by this subsection.

Duration and discharge of protection order

6. (1) A party to the proceedings in which an order was made, may apply to the court for it to be discharged.

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

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

Application for grant of an occupation order

7. (1) Application may be made to the Court for an occupation order granting the prescribed person named in the order the right to live in the household residence.

(2) Subject to section 14 and subsection (3) of this section, the Court may, on an application under subsection (1), make an occupation order granting to the applicant, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right to occupy the household residence or any other premises forming part of the household residence.

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

- (a) is necessary for the protection of a prescribed person; or
- (b) is in the best interests of a child.

***Ex parte* application for occupation order**

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

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

(2) Any occupation order made on an *ex parte* application shall be an interim order.

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

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

- (a) on the discharge of the order by the Court;
- (b) on the discharge of an interim protection order made pursuant to subsection (3);
- (c) in any other case, at the expiration of a period of seven days after the date on which the occupation order was made.

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

Effect of occupation order

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

Variation or discharge of occupation order

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

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

Tenancy order

11. (1) An application may be made in accordance with this Act to the Court for an order vesting in the applicant the tenancy of any dwelling house which, at the time of the making of the order—

- (a) the respondent is either the sole tenant or a tenant holding jointly or in common with the applicant; and
- (b) is the household residence of the applicant or the respondent.

(2) Subject to section 16, the Court may make an order on an application under subsection (1) if and only if the Court is satisfied that such an order—

- (a) is necessary for the protection of the applicant; or
- (b) is in the best interests of a child or a dependant.

Grant of tenancy order on an *ex parte* application

12. (1) A tenancy order may be made on an *ex parte* application if the Court is satisfied that—

- (a) the respondent has used violence against or caused physical or mental injury to the applicant or dependant; and
- (b) the delay that would be caused by proceeding on notice would or might expose the applicant, child or dependant, as the case may be, to physical injury.

(2) Any tenancy order made on an *ex parte* application shall be an interim order.

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

(4) A tenancy order which is made on an *ex parte* application while the applicant and the respondent are living together in the same household shall expire—

- (a) on the discharge of the order by the Court;
- (b) on the discharge of an interim protection order made under subsection (3);
- (c) in any other case, at the expiration of a period of seven days after the date on which the order was made.

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

Effect of tenancy order

13. (1) Where a tenancy order is made the applicant shall, unless the tenancy is sooner determined, become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of that order, and the respondent shall cease to be the tenant.

(2) Every tenancy order shall have effect and may be enforced as if it were an order of the Court for possession of the land granted in favour of the applicant.

(3) Nothing in this Act or in any tenancy order—

- (a)* limits or affects the operation of any enactment or rule of law for the time being applicable to any tenancy to which a tenancy order applies, or to the dwelling house held under the tenancy; or
- (b)* authorises the Court to vary, except by vesting the tenancy pursuant to this section or re-vesting the tenancy pursuant to section 15, any express or implied term or condition or the tenancy.

Power to discharge tenancy order and re-vest tenancy

14. (1) The Court may, if it thinks fit on the application of—

- (a)* the applicant or respondent; or
- (b)* the personal representative of either party,

make an order (in this section referred to as a “re-vesting order”) re-vesting the tenancy accordingly.

(2) Where a re-vesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force immediately before the date on which the re-vesting order was made.

Procedure in relation to occupation orders and tenancy orders

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

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

(3) Where an application is made for an occupation order, the Court may treat that application as an application for a tenancy order or an

occupation order or both and may make a tenancy order (whether or not it makes an occupation order) if it is satisfied that—

- (a) it has jurisdiction to make the tenancy order and that the making of such order is appropriate; and
- (b) subsection (1) has been complied with in respect of the making of a tenancy order.

(4) Where an application is made for a tenancy order, the Court may treat that application as an application for an occupation order or a tenancy order or both and may make an occupation order (whether or not it makes a tenancy order) if it is satisfied that—

- (a) it has jurisdiction to make an occupation order and that the making of such an order is appropriate; and
- (b) subsection (1) has been complied with in respect of the making of an occupation order.

Power of Court to make ancillary orders

16. (1) On or after making an occupation order or a tenancy order, the Court may, subject to subsection (2), make an order granting to the applicant the use, for such period and on such terms and subject to such conditions as the Court thinks fit, of all or any of—

- (a) the furniture;
- (b) household appliances; and
- (c) household effects,

in the household residence or other premises to which the occupation order relates or in the dwelling house to which the tenancy order relates.

(2) Notwithstanding subsection (1), an order made under that subsection shall continue in force for a period of three months beginning on the date on which the order is made, unless the Court otherwise directs, but, in any event, shall expire if the occupation order made in relation to the household residence or other premises of the tenancy order made in relation to the dwelling house expires or is discharged.

(3) On making an occupation Order or a tenancy order the Court may also make an Order for the payment by the respondent to the applicant a sum of money by instalments or otherwise for a period of three months if the applicant was dependant on the respondent for financial support.

Interim orders

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

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

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

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

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

(5) In this section—

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

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

Conduct of proceedings

18. (1) No person shall be present during the hearing of any proceedings under this Act (other than criminal proceedings) except—

- (a) officers of the Court;
- (b) parties to the proceedings and their counsel;
- (c) witnesses;
- (d) any other person permitted by the Judge to be present.

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

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

Special measures in case of vulnerable witnesses

19. (1) Where during the receipt of evidence from a witness in any proceedings under this Act it appears to the Court that the witness is vulnerable, the Court may take such measures as it considers necessary in the circumstances to safeguard the integrity of the evidence being given by that witness.

(2) The measures which may be taken by the Court under subsection (1) include—

- (a) permitting the video recording of the evidence;
- (b) permitting cross examination of the witness over video link or with the use of screens; and
- (b) preventing the personal cross-examination of the witness by the defendant.

(3) For the purposes of this section a witness is vulnerable if for any reason peculiar to the witness or the circumstances, it appears to the Court that the integrity of the evidence will be affected if special measures are not taken to safeguard the integrity of such evidence.

Evidence

20. In any proceedings under this Act (other than criminal proceedings) including proceedings by way of appeal, the Court may receive such evidence as it thinks fit whether it is otherwise admissible in a Court of law or not.

Standard of proof

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

Restriction of publication of reports of proceedings

22. (1) Subject to subsection (4), no person shall publish any report of proceedings under this Act (other than criminal proceedings) except with the leave of the Court which heard the proceedings.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(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 professions, officers of the Public Service, psychologists, marriage counsellors or social welfare workers.

Orders by consent

23. In any proceedings under this Act a Court may make any order by the consent of all the parties to such proceedings.

Counselling

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

Appeals

25. (1) Any person aggrieved by—

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

may, within 28 days after the decision of the Court, appeal to the Court of Appeal.

(2) Except where the Court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every such injunction or other order may be enforced in the same manner and in all respects as if no appeal under this section was pending;

Protection of mortgagee

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

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

Rules of Court

27. Rules of Court may be made for the purpose of regulating the practice and procedure of the Court in proceedings under this Act providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

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